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Peter J. Belton

A SENIOR STAFF ATTORNEY REFLECTS ON FOUR DECADES WITH THE
CALIFORNIA SUPREME COURT (1960-2001) AND A LIFETIME WITH DISABILITY

With an Introduction by
Jake Dear

Interviews Conducted by
Germaine LaBerge
in 1999-2001

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Peter Belton in his Supreme Court office, August 2000.

Cataloging Information

BELTON, Peter (b. 1933)

California Supreme Court attorney

Peter J. Belton: A Senior Staff Attorney Reflects on Four Decades with the California Supreme Court, 1960-2001, and a Lifetime with Disability, 2003, xi, 371 pp.

Birth in Chile; childhood in England and Canada during WW II; Lycée Français de New York, 1946-1952; Harvard College and Law School, 1952-1957; contracting polio and adapting to life with a disability; teaching legal writing at UC Berkeley Law School; staff attorney at California Supreme Court, 1960-2001: work with Justices Rey Schauer and Stanley Mosk; reflections on the Rose Bird court, court processes, drafting opinions; state constitutionalism; California Handicapped Access Code, Title 24, and accessibility in general; revising California Rules of Court for the Judicial Council.

Includes interviews with Justice Stanley Mosk recorded in 1998.

Introduction by Jake Dear, Senior Staff Attorney for Chief Justice Ronald George.

Interviewed 1999-2001 by Germaine LaBerge, The Regional Oral History Office, The Bancroft Library, University of California, Berkeley.

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INTRODUCTION by Jake Dear

I met Peter Belton 20 years ago when, having just completed my second year of law school, I served as a student extern for Justice Stanley Mosk of the California Supreme Court. By then Peter had worked as a staff attorney for Justice Mosk for almost two decades. At that time, and also when I served after graduation for a year as a law clerk for Justice Mosk, Peter often took pencil firmly in hand and pruned--no, slashed--my purple prose. He taught me how to write and how to think, in a way that law school and law review did not.

During my own past two decades on the staff of the California Supreme Court, where I've worked for four justices, I and all my colleagues have benefited greatly from Peter's friendship, intellect, and good humor, and been inspired by his crisp writing style. In return, I've provided Peter with numerous opportunities for eye rolling, head shaking, and general amusement because of, among other things, my attempts to change his views on legal matters and my efforts to learn and speak French. I've also poured his daily cups of Earl Grey tea and, on request, lifted his left leg over his right, being careful first to place his right foot on the well-worn stool that is never far from his wheelchair. But that is getting ahead of the story...

The California Supreme Court justices with and for whom Peter has worked have described his contributions to the court in glowing terms:

Chief Justice Ronald M. George, introducing Peter at the dedication of the court's refurbished historic courtroom in 1999: "Peter has been with the court since 1960, when he began as a research attorney for Justice Rey Schauer. Like the justice he serves [Stanley Mosk], Peter is one of the great resources upon which we all rely. His wide knowledge of the law, his grasp of grammar and esoteric argument alike, and his experience and intelligence, have made him not only an invaluable assistant to Justice Mosk and the entire court, but also a memorable teacher for the scores of annual clerks and externs who flourished and became better lawyers under his tutelage."

Justice Kathryn Mickle Werdegar, presenting Peter with the 1998 Public Lawyer of the Year Award from the Public Law Section of the State Bar: "A graduate of Harvard Law School, Peter was admitted to the California Bar in 1960. From that time forward...he has devoted his considerable legal talents to service of the California Supreme Court. Given Justice Mosk's prodigious output..., can there be any doubt about Peter Belton's enormous contribution to the law of the State of California?"

Justice Joyce L. Kennard (and Chairperson of the Judicial Council's Appellate Advisory Committee), with whom Peter has worked for the past four years to revise California's appellate court rules: "Toward the end of a lengthy and brilliant career as a judicial staff attorney on the California Supreme Court, Peter agreed to undertake this monumental project. As the chair of the appellate rules task force, Peter has done a superb job, giving the revised rules, and the official commentary to those rules, a clear and crisp style that is sure to be the envy of other states..."

For a summary of Peter's accomplishments at the court, we may rely on Justice Stanley Mosk, whom Peter served throughout Mosk's entire record-breaking tenure. Commemorating Peter's 40th anniversary of service to the court, Justice Mosk wrote: "You are indispensable to the judicial process in this state. Your contributions are too numerous to specify. Needless to say they have been evident in every category of controversy that found its way to the Supreme Court."

These high commendations of Peter's work focus, of course, on what Peter has become and what he has achieved during his past forty-plus years at the court. But the benefit of a properly executed oral history--of which this certainly is one--is that it puts accomplishment in context. Peter's early life, set forth in the first four chapters of this history, makes fascinating reading and goes a long way toward explaining the who, how, and why of Peter and his influence on the law. And because the story is told in Peter's own words, the reader will catch many

glimpses of, and experience the flavor of, Peter's singular erudition, command of language and sense of humor.

What makes this story of accomplishment in the legal world unique is its genesis. Peter was born in Chile to multilingual parents, a British father and a French mother. His first language was Spanish. In 1935 the family moved to Britain, where Peter learned English. With the outbreak of World War II, Peter's father joined the British army and served for six years as an intelligence officer; the rest of the family was evacuated overseas in a sparsely-guarded convoy to Canada, where they spent the war in Toronto. In 1946 the reunited family moved to New York City, where Peter received a traditional--and therefore both formal and thorough--French secondary school education at the Lycée Français de New-York. On graduation in 1952 he entered Harvard College as a sophomore, studying philosophy. But then his life changed again: as a member of a sailboat crew in the Caribbean in the summer of 1954, he had a fateful experience in the dining room of a hotel in Port-au-Prince, Haiti, and sailed back to Miami stricken with polio. It was less than a year before the Salk vaccine was released.

After various therapies, including time spent in an iron lung and a one-year absence from college, Peter took up life in a wheelchair and began the difficult process, continuing to this day, of learning to cope with a major disability and with accessibility barriers that are no less personal than physical. His ability to overcome these barriers showed early, in his persistence in returning to Harvard College, graduating with honors, and continuing on to Harvard Law School. Once there, he was summoned to the office of Law School Dean (later United States Solicitor-General) Erwin N. Griswold, who told Peter that there just wasn't going to be an active career in law for someone "in [your] condition." Undaunted, Peter stayed in school, graduated, and has enjoyed a legal career matched by few others in his Harvard class.

Peter married, moved to California to teach a legal writing course at Boalt Hall, passed the bar exam, started a family, and in 1960 began his long tenure on the staff of the California Supreme Court by accepting an annual law clerk position with Justice B. Rey Schauer. That one-year term was extended to four, and on Justice Schauer's retirement in 1964 Peter joined the staff of then recently-appointed Stanley Mosk as a career attorney, bestowing on the newest justice, and the court, a rich mixture of life experience, wisdom, intellect, humor, and devilish grin. As the various justices' quotes set out above suggest, and as the concluding chapters of the following history explain, Peter's life experiences helped shape the law of California and elsewhere for decades to come.

A final caveat. An oral history, even one as comprehensive as this, cannot paint the full picture of a man. Readers will probably get the correct impression that Peter makes a delightful dinner table conversationalist, but they might not be aware of the broad range of his repertoire. Legal matters aside, an evening spent with Peter will include discussions of literature, theatre, politics, and--if you are up to it--astronomy. His French, written and spoken, is, of course, *parfait*.

Jake Dear
Senior Staff Attorney for Chief Justice
Ronald M. George
California Supreme Court

June 2002

INTERVIEW HISTORY by Germaine LaBerge

In 1998, the Regional Oral History Office conducted a series of five interviews with Justice Stanley Mosk, focusing on his career as associate justice of the California Supreme Court, under the auspices of the California State Archives State Government Oral History Program. (Justice Mosk had provided an interview on his years as Attorney General of California in 1980.) For background, the judge suggested I speak to Peter Belton, his senior research attorney. "Justice Rey Schauer retired, and called my attention to Peter Belton...and told me that I'd be doing myself a great service if I took Peter Belton on...He's been with me all thirty-three plus years that I've been on the court. He has a great legal mind." (p. 288)

Over the course of the year, it became apparent to me that Peter worked closely with all the justices of the supreme court, and trained most of their staff. Indeed, Peter's unique historical perspective of the California Supreme Court from 1960 on would be invaluable to researchers in the field of jurisprudence. Outgoing and loquacious, Peter still needed coaxing and prodding before he agreed to record an oral history of his own. Luckily, he acquiesced. The oral history which follows (with Stanley Mosk's 1998 interview appended) is an insider's view of the workings of the court.

We see the World War Two homefront from the perspective of a young English boy relocated to the safety of Canada for the duration; postwar New York City through the eyes of an English youth attending the Lycée Français; the experience of polio and adaptation to disability from the vantage point of a Harvard law student; and last but not least, the evolution of California and United States law from a brilliant, clear-spoken legal scholar.

Thirteen interviews in all (twenty-one hours) were recorded at the California Supreme Court offices on McAllister Street in San Francisco, from July 1999 to June 2001. Peter Belton's room is lined with volumes of *California Reports*, including the special Volume 23 which commemorates his forty years of service to the court (June 1, 1960 to June 1, 2000). Always upbeat, Peter launched easily into the topic at hand, whether it be French-English family history, descriptions of Chief Justices Phil Gibson and Roger Traynor, the court's decision-making processes, the joys of children and grandchildren, or disability issues in everyday life. (These included making appointments for wheelchair repair and securing parking and easy access to the Palace of the Legion of Honor for an evening lecture.) Interview tapes were transcribed and edited at the Regional Oral History Office. True to his word, Peter read the transcripts carefully. "...you promised me I'll have the opportunity to edit all these ramblings later, which I promise you I'll do vigorously." In doing so, he kept the conversational flavor of the interviews and the result is a superb transcript. The oral history was indexed at ROHO and photographs (many taken and developed by Peter) were added. An Appendix includes speeches to the California State Bar on the occasion of his award as the Outstanding Public Lawyer of the Year (1998) and to the California Supreme Court honoring Justice Mosk's record-setting service (January 2000).

Many thanks to Jake Dear, senior staff attorney for Chief Justice Ronald M. George for his fine introduction—he paints a portrait of Peter as mentor and writing coach to the entire supreme court staff as no one else can. And we are most grateful to Patricia Sheehan at the California Supreme Court for expert help with arrangements and research. Finally, my heartfelt thanks to Peter Belton for his care and perspicacity in the recording of this oral history, a record of day-to-day grappling with legal issues in our democracy. It reflects the ability of one individual to better his society, albeit in a somewhat hidden way.

The Regional Oral History Office was established in 1954 to augment through tape-recorded memoirs the Library's materials on the history of California and the West. Copies of all interviews are available for research use in The Bancroft Library and in the UCLA Department of Special Collections. The office is under the direction of Richard Cándida Smith, and the administrative direction of Charles B. Faulhaber, The James D. Hart Director of The Bancroft Library, at the University of California, Berkeley.

Germaine LaBerge,
Interviewer/Editor

March 2003
Regional Oral History Office
The Bancroft Library
University of California, Berkeley

March 2003

SELECTED ORAL HISTORIES ON CALIFORNIA LEGAL HISTORY

The following interviews related to legal history have been completed by the Regional Oral History Office, a division of The Bancroft Library. The office was established to tape record autobiographical interviews with persons who have contributed significantly to the development of California and the West. Transcripts of the interviews, typed, indexed, and bound, may be ordered at cost for deposit in research libraries.

JUDICIARY

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A California Supreme Court Justice Looks at Law and Society, 1964-1996, 1997, 266 pp.

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California Supreme Court Justice Jesse W. Carter, 1959, 546 pp.

Gibson, Phil S. (1889-1984)

"Recollections of a Chief Justice of the California Supreme Court," in *California Constitutional Officers*, 1980, 259 pp. (Goodwin Knight - Edmund G. Brown, Sr. Project)

Mosk, Stanley (1912-2001)

"Attorney General's Office and Political Campaigns, 1958-1966," in *California Constitutional Officers*, 1980, 259 pp. (Goodwin Knight - Edmund G. Brown, Sr. Project)

Mosk, Stanley (1912-2001)

Justice of the California Supreme Court, 1964-present, 1998, 93 pp.

Newman, Frank C. (1917-1996)

Professor of Law, University of California, 1946-present; Justice, California Supreme Court, 1977-1983, 1994, 336 pp.

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Earl Warren: The Chief Justiceship, 1977, 245 pp. (Earl Warren Project)

Herbert Brownell, "Earl Warren's Appointment to the Supreme Court."

Louis Finkelstein, "Earl Warren's Inquiry into Talmudic Law."

James C. Hagerty, "Earl Warren's Appointment to the Supreme Court."

William W. Oliver, "Working in the Supreme Court: Comments on Court, Brown Decision,

Warren, and Other Justices."

Martin F. Richman, "Law Clerk for Chief Justice Warren, 1956-1957."

Harold Stassen, "Eisenhower, the 1952 Republican Convention, and Earl Warren."

M. F. Small, "Letter Regarding Earl Warren's Court Appointment, November 15, 1972."

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Faith in Justice: Alfonso J. Zirpoli and the United States District Court for the Northern District of California, 1984, 249 pp.

LAWYERS AND LAW FIRMS

1. INDIVIDUALS

Belton, Peter J. (b. 1933)

A Senior Staff Attorney Reflects on Four Decades with the California Supreme Court (1960-2001) and a Lifetime with Disability, 2003, 371 pp.

Bridges, Robert (b. 1909)

Sixty Years of Legal Advice to International Construction Firms, Thelen, Marrin, Johnson and Bridges, 1933-1997, 1998, 134 pp.

Campbell, Kemper (1881-1957)

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Thelen, Max (1880-1972)

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LEGAL EDUCATION

Kragen, Adrian A. (b. 1907)

A Law Professor's Career: Teaching, Private Practice, and Legislative Representative, 1934-1989, 1991, 333 pp.

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BIOGRAPHICAL INFORMATION

(Please write clearly. Use black ink.)

Your full name PETER JEFFERY BELTON

Date of birth 8-3-33 Birthplace CHILE

Father's full name FREDERICK WILLIAM BELTON

Occupation BUSINESSMAN Birthplace UNITED KINGDOM

Mother's full name MARIE-MADELEINE BELTON (NEE DELANDRE)

Occupation HOME Birthplace FRANCE

Your spouse _____

Occupation _____ Birthplace _____

Your children JEFFREY (B. 1962), MARC (B. 1964),
Sawie (B. 1967)

Where did you grow up? CHILE, ENGLAND, CANADA, U.S.

Present community SAN FRANCISCO, CA

Education LYCEE FRANCAIS DE NEW YORK (1952); HARVARD
COLLEGE (A.B. 1956); HARVARD LAW SCHOOL (LLB 1959)

Occupation(s) ATTORNEY, STAFF OF JUSTICE MOSK,
CALIFORNIA SUPREME COURT

Areas of expertise JUDICIAL STAFF ATTORNEY

Other interests or activities READING (NATURAL SCIENCES), THEATER,
MUSEUMS.

Organizations in which you are active _____

INTERVIEW WITH PETER J. BELTON

I FAMILY BACKGROUND AND CHILDHOOD, 1933-1946

[Interview 1: July 14, 1999] ##¹

Birth in Chile

LaBerge: It's July 14, 1999, and we're in the offices of the California Supreme Court with Peter Belton. Peter, we always like to start at the beginning, so tell me about the circumstances of your birth and a little about your family background.

Belton: I was born in Chile in 1933. The reason I was born in Chile is because my father was working there for a British worldwide trading firm--importers and exporters. He was assigned to that location, where the company had a trading station, and he lived there for a decade or so with my mother. During that period, my sister and I were both born in a small town in the north of Chile called Antofagasta.

British Father and French Mother

LaBerge: What were your parents' names?

Belton: My father was British. His name was Frederick William Belton, and he was born in a small town north of London called Watford. My mother was French, and her name was Marie-Madeleine Delandre.

LaBerge: Okay. And how did they meet?

Belton: I don't know how far back you want me to go. [laughter] She was born in the east of France, in Lorraine, in a town called Mars-la-Tour--an area which, of course, was next to the part of France the Germans took in the Franco-Prussian War. Her part of Lorraine was never taken

1. ## This symbol indicates that a tape or tape segment has begun or ended. A guide to the tapes follows the transcript.

by the Germans, but it was very close to the border. When the First World War broke out--she was 12 years old--her father became concerned that she was too close to where the Germans had previously invaded, so he decided to evacuate her for the duration of the war. He had a business acquaintance in England, in a small town in the south of England called Chichester. He sent my mother to live with this English family in Chichester, where she went to high school, graduated, and then decided to make a living as a translator from French into English in London. She went "up to London," as they say, and took a job in a bank translating business correspondence from France from French into English.

But she wasn't satisfied with this, and she decided she'd like to learn yet another language --in particular, Spanish--so she signed up with the Berlitz Language School in London to learn Spanish. Coincidentally, my father, who was also, like her, a self-made person who didn't have any higher education beyond high school, was working in a different bank in London, and he, too, decided he'd like to learn Spanish so that he could "sail the Spanish Main" and see the world. He signed up at the same school and they met, both learning Spanish in the Berlitz school. One thing led to another, and they became engaged.

My father's first job overseas was in the oilfields at Lobitos, in Northern Peru, where he was hired as a young assistant manager. It was a Wild West kind of place--he told me he used to make his field inspections on horseback. My mother stayed behind in England. As a result, they had a long engagement, as people did in those days--a couple of years. Then he returned, and they were married in England in 1925. Next he joined Antony Gibbs & Company, the worldwide English trading firm I spoke of earlier. He stayed in that job for the rest of his working life--just like me! They had offices in many places, and my father was first assigned to their station in Antofagasta, Chile. They went out there together, and began a life very different from their life in England. My sister was born there in 1929 and I came along a few years later.

LaBerge: And what's your sister's name?

Belton: Suzanne. French spelling.

LaBerge: What do you remember about Chile, or don't you?

Belton: No, I left there when I was two because at that point my sister was six: she's four years older than I. It was time for her to go to school, but at that time, in this small town in northern Chile, there was really no school that was appropriate for a "gringa." They wanted her to have an English education if possible--at least bilingual--so my father arranged to be transferred back to London to the main office of the same company.

In 1935 we all got on a boat called *La Reina del Pacifico*, sailed through the Panama Canal, and came back to England and took up residence near my grandparents--my English grandparents--in the south of England, but within commuting distance of London so my father could go to work by train to London.

Languages

LaBerge: What language did you grow up speaking?

Belton: My first language was Spanish because I had a Spanish nursemaid in Chile. Then when I came to England and lived in this small town in the south of England, I saw no reason at the age of two and three and four to learn anything else, so I continued to speak Spanish. That was fine at home, but when we were out in public, it was deemed a curiosity. I was a small, very English-looking boy speaking Spanish to my mother when we went shopping. This was commented upon by the locals as in any small town, so my parents tried to get me to learn English. And I'm told--I don't remember--I'm told that I was resistant to this, as young children may be, so they dealt with it by not talking to me at all unless I talked in English. That eventually broke my resistance, and I decided I'd go along with them and learn English.

LaBerge: And we're all grateful ever since. [laughter]

Belton: I learned English, and I didn't speak Spanish again for many years. But apparently it had laid down enough of a basis in my mind. I later learned that this is what happens with the development of the brain in children: that you never quite forget an early language. And so when I did take it up again in college, it came quite easily to me. I haven't continued with it, but if I were to continue I'm sure I could become fluent in it pretty easily because of that background.

LaBerge: And what about French?

Belton: That came along later.

LaBerge: Oh, so your mother didn't speak French to you?

Belton: No, not at that time. They were determined that I should learn English, so they concentrated on that.

Grandparents

LaBerge: Well, tell me about the extended family. You mentioned your grandparents. Did you have a lot of contact with them?

Belton: Yes, my English grandparents--coincidentally, my English grandmother was herself half French, so I'm really three-quarters French in that sense. Her name was Alice Sellier. But my English grandfather was very English, and his family had been for generations, of course.

LaBerge: And what was his name?

Belton: His name was Charles Percy Belton. Yes, Percy! He had three sons--my father being the middle one--so I had two uncles named Charles and Alan. Neither of them did I know well.

They both went in different directions. In those days people did travel a lot. My older uncle spent a lot of his working career in China, in Shanghai. These were the days when the British Empire was at its peak, and it sent its sons around the world to run the empire or to do business, and they were often away in China or India or you name it.

My mother's family--she was an only child, and there was no one on that side that I knew. Her parents died before I knew them, so I had no connections on that side.

LaBerge: Well, did you have a lot of contact with your grandparents when you were growing up?

Belton: Yes, when I was in England, which was from 1935 to 1940. We were living in this small town in England, or actually two or three small towns, and eventually we settled next door--literally next door--to my grandparents, so I did see them a lot during those years.

World War II in the South of Britain, 1939-1940

Belton: But then the war came along--the Second World War--and that changed everything for me and for a lot of people in the world. I wasn't unique in that regard.

LaBerge: So, 1940. What happened? Where did you go in 1940?

Belton: Well, my father "joined up," as they say, on the second day of the war, which for the British was September 1939--a long time before the Americans entered the war. He was 38 years old, which was, you know, older than one would expect to be in the army. But in those days, England was alone and took everybody who volunteered, regardless of age, as long as you were fit, and he was.

He eventually went into the military intelligence branch, the equivalent of OSS [Office of Strategic Services] in this country, because he was older and he was multilingual. At that time he spoke both French and Spanish as well as English, so he was very useful for military intelligence work.

So he joined up, as I say, on the second day of the war. We stayed put and I continued to go to school, but for the first ten months of the war, you may remember, it was called the "phony war." There was very little happening as far as Great Britain was concerned. Hitler was occupied with invading to the east--Czechoslovakia and Poland and countries in that direction. The western front was quiet. The French were sitting behind the Maginot Line thinking that they had a defense. Of course they didn't, but they didn't know that at that time. But all was quiet on the western front, so to speak.

Then came June 1940; and on June 10, the Battle of Britain began, and the Nazis launched a heavy-duty air campaign, bombing London and other industrial centers in England. And about the same time, of course, they invaded the Lowlands and France and swept around the Maginot Line, and that was the end of that: they occupied Paris and France soon fell.



Frederick William & Marie-Madeleine Belton, Peter Belton's parents, Antofagasta, Chile, circa 1926.



Charles Percival & Alice Belton, Peter Belton's grandparents, in their garden at Appleglen, Farnham, England, June 1943.

We were in the south of England, as I say, and the bombers all flew overhead on the way to London. Every night they would go over, wave after wave. It was very loud and very threatening. I was six years old: I thought it was very exciting. I would want to rush outside and look at them, but I was, of course, kept indoors. We had all the blackout curtains put up to prevent light from shining outside--they took that very seriously. The cars had their headlights covered and you couldn't see any lights outside.

What the bombers would do is they would go to London and drop their bombs and turn around and go back to Germany. But on the way back, if they had any bombs, they'd drop them on whatever moved. They didn't want to take them back to Germany, so there were some damage and casualties out in the countryside, too.

LaBerge: What was the name of your town?

Belton: It was called Farnham--just a little town in the county called Surrey. But not far away from us, there was a large town called Aldershot, which for many years had major military barracks. And that was possibly a target, so the result was that things were getting a little hot even in Farnham.

Emigration to Canada for the Duration of the War

Belton: My father decided, and my mother, that we should emigrate to a safer place--the two children--my sister, myself--and my mother, while he continued to serve in the army. We emigrated then, at the end of June 1940, and went to Canada.

The reason we went to Canada was that my grandfather--the English grandfather I mentioned--was one of a large Victorian family, and he had a number of brothers and sisters. There must have been eight or ten of them altogether. At the turn of the century or thereabouts, a number of them emigrated voluntarily to British Canada in search of a new career and new life--new opportunities. They had settled, most of them, in and around Toronto, and then some further west; what family we had was in Canada, which was a safe place, so that seemed a logical decision. My sister, my mother, and I--it was arranged that we would go to live with some of these relatives in Canada, at least for a while, and get settled there and "for the duration," as it was said--the duration of the war.

LaBerge: And meanwhile was your father living at home?

Belton: No, he was fighting the war.

LaBerge: Okay, so he was off.

Belton: He was away. It was of course before the invasion, so he was stationed in England; but he was in various army camps working on security questions. He would come home from time to time, but not very often. I have vague recollections of him in his uniform. He looked very handsome, but that was all we saw of him.

LaBerge: Do you remember any of the discussions about moving?

Belton: No, I was just told. When you're six years old, you're told what to do. Anyway, we got on the train, went up to Liverpool--

On Shipboard to New York

LaBerge: And do you remember all this?

Belton: Yes, I remember getting on the train, remember going to Liverpool, remember getting on board the ship.

We were in a convoy of four vessels. Our vessel and the other three were basically full of wives and children. We were all in the same boat, so to speak. We were all what were euphemistically described as "war guests." A war guest is a refugee who can pay his own way, and so the government put together this convoy of four commandeered ocean liners.

Ours was the *Britannic*--a Cunard liner. Then there was the *Empress of India* and a couple of others. I believe the *Empress of India* was subsequently sunk--torpedoed--not on that voyage but a little later. The four vessels formed the convoy in Liverpool, and we said good-bye to my father. Then I didn't see him for six years--that's a long time when you're six years old--because he stayed behind and we went off. But the war separated many, many families. We were just one of many.

As I said, the convoy was four ships. They couldn't afford much protection for us because there was a war on, as the saying goes, so they assigned an old destroyer to come along and make lazy circles around the four of us. We were pretty slow. And one plane that could fly half-way across the Atlantic and then had to turn around and fly back because it didn't have enough fuel. At any one moment, the destroyer was on the other side of the convoy, and we would have been sitting ducks for torpedoes. As a result, there was much concern about that, and we had many life boat drills when we had to wear our life jackets.

I thought it was all very exciting. My mother, of course, was frantic like all the mothers on board, but the kids were having a great adventure. I would spend a lot of time at the rail spotting U-boats right and left. Of course, I never saw one, but I thought I did [laughter], and I raised the alarm more times than it was deserved.

I also undertook to explore the ship from stem to stern, going largely in places where I wasn't supposed to go. But that's what little boys do. And my mother would have to explore the ship to find me and bring me back to where I was supposed to be. With her French accent, she would wander the ship crying, "Petère, Petère." There are sailors still alive today, perhaps, who remember that voice and that name being called out as we steamed through the night. [laughter] Anyway, much to my annoyance, we had no adventures--no submarines and no

icebergs--I was ready for anything. We arrived in New York City instead, which was a completely new world, as you can imagine.

LaBerge: And for your mother, too?

Belton: Yes.

LaBerge: She probably had never met these people in Canada. They really weren't related to her.

Belton: No, not at all. Even just New York City was an adventure. We knew no one in New York City. But that's the place the ship went, and then we had to take a train to go up to Toronto. But I remember my first few days in New York City: it was all a wonderland--the subways and all the strange food that was eaten and the strange accents that I heard all around me. It was quite an adventure.

Settling in Toronto, Ontario, Canada

Belton: We took the train to Canada, settled in Toronto, and spent the war there. I went to school there and did my grades two through eight. In other words, my primary education was in a Toronto public school.

LaBerge: What kind of an adjustment was that for you, and who were you living with?

Belton: After just a few weeks with living with the relatives, my mother was very independent and she wanted to strike out on her own. So she got a job and we rented a little apartment near a school. We were all set. She worked and we went to school.

LaBerge: Did she work as a translator?

Belton: No, at first she couldn't get anything that was really appropriate for her skills. She undertook various selling and other rather menial jobs just to pay the rent. I remember she worked in a fish store selling fish at one point, nearby. But eventually she found herself a teaching job in a girls' private high school that my sister went on to attend. She was taken on as a French teacher, which was appropriate. It was not advanced French; these were young Canadian girls. But she was perfectly capable doing that, and she was always inclined to teach--I think she would have made a great teacher. Maybe that's where I got what little talents I have in that regard. And that was what she did for the rest of the war.

LaBerge: Tell me about the relationship with the family in Canada.

Belton: Well, it was strained at first, which is, I think, inevitable when refugees move in. I'm sure that's happening with the Albanian refugees today and the Bosnians before them and so forth. You know, you welcome them but after a while you're tripping over each other.

I think the problem was that there were two young children--myself and my sister--these were older people who weren't used to having young children underfoot and getting into things. I'm sure I would feel the same way today.

I remember one of my uncles there--they weren't my uncles, they were my great-uncles--had an extraordinary stamp collection, very serious, and I got into it. Of course, I didn't treat it with the utmost respect it deserved. I don't think I damaged anything, but I was probably turning the pages too fast. To me they all looked alike, but to him they all had very subtle differences and great value, so it was a strain. It was a good thing that we moved out and got our own apartment.

Things were difficult. There wasn't much money because my father was able to send only a very small amount of money. British army pay was very minimal and he was able to send, I think, a little bit every month or so, and I'm sure he sent everything he could, but we were basically on our own.

Pervasive Wartime Atmosphere

Belton: But you know, there was rationing, so you couldn't spend your money much anyway because the war was pretty serious in Canada. Rationing was serious, and we just lived a very simple life. But we got through it. There wasn't any great hardship on us. We were in a safe place.

LaBerge: What kind of religious background, if any, did you have?

Belton: Not very much. My mother, of course, being from a small town in France, was nominally a Catholic, but she didn't ever practice that I knew. And my father, being from a small town in England, was nominally Protestant, but again, there wasn't any practicing of that religion. No, that's an overstatement now that I think about it. During the war in Canada, my mother made sure that we went to church every Sunday at a local Anglican church.

Both of us children were in the choir, and I think the reason was that that way she could keep an eye on us for a few hours on Sunday. She sat in the front row and kept a very sharp eye on me, which was a good thing too [laughter] because I would smuggle toy war planes in under my surplice. The surplice was the white gown I had to wear. I would smuggle these war planes--little models of British war planes--in under my surplice and proceed to fight dog fights with my neighbor during the sermon. And there would be shushes and glares from her, but I was irrepressible. There was no doubt about that.

Anyway, for several hours every Sunday, she at least knew where I was and she could keep an eye on me. But it had no lasting effect on me, if that's what you're asking.

LaBerge: It's just interesting to know where all these things come in, where your philosophies come in and everything. Well, tell me what you liked to do as a kid. Did you like to read, besides war planes and all that?



Peter Belton in his Gate House School uniform, Farnham, England, circa 1938.



Frederick William Belton, British Military Intelligence, August 1943.

Belton: Yes, I did. I was just a normal kid during the war. And the war was the biggest thing that was going on. I mean, it was everywhere. It was in the newspapers and on the radio; there was no television.

LaBerge: Yes. It affected where you were living--everything.

Belton: Right, and the movies were all war movies. There was no television, but the newspapers were all discussing the war, and every day in the paper there'd be new maps showing the movements of the armies; especially after the invasion--where the front line was, it would change every day--and reports on casualties and things.

Father's Service in MI-6

Belton: My father was very good about writing letters, so we did get quite a bit of news. Of course, they were censored, but, just in general terms, we knew how he was and where he was and so forth. He, as I say, stayed in England until the invasion.

LaBerge: In '44?

Belton: Yes, D-day, June 6, 1944. He went across very soon after that, probably within the first ten days or so because once they started moving across France, they moved rather fast, [General George S.] Patton and the others leading the way. They needed agents who could come in and mop up behind them because they were moving so fast, and collect the collaborators and the spies and generally bring security to the places that they had overrun. His job was partly to do that.

Now, I will say that I don't know much about it because England at that time, and still today, unfortunately, has very strict secrecy laws--much more than the United States. He was sworn to long-term total secrecy, and anybody in MI-6 was under those obligations. I think he wasn't allowed to talk about it for 30 years. They were very serious about it. So he never really told me much about what he did during the war; I just got some vague allusions from time to time.

When I was old enough to understand and ask questions, he couldn't answer them. And he was very strict about that: he wouldn't. Then, after the 30 years had passed, we were living different lives and I didn't see him much, and so I didn't ask him any more. And so he took these secrets to his grave, as did many of his colleagues, I'm sure.

All I know is he did spend the war in France and Germany after the invasion. And when the surrender was signed with [Field Marshal Bernard Law] Montgomery and [General Dwight D.] Eisenhower, he was actually in the building and met Eisenhower and people like that. By then, he had risen to the rank of captain. After the war he was demobilized--some months later. It took a while because there were things that had to be cleaned up, but he was demobilized probably in the winter of '45.

The war ended of course in the spring and summer of '45, and he was demobilized in the winter of '45 and went back to work for the same company. This time they made him the president of the New York branch of the company, which was, of course, a very large branch of the company and a very big step up for him. But that meant we had to move from Toronto to New York, and that's how I came to the United States.

Excellence of Canadian Schools

LaBerge: Okay, well, before we get to New York, tell me about your schooling in Canada--what you remember about it.

Belton: Well, Canadian grade schools are very good. They're strict, they're very academically oriented, and they give you a very solid foundation, especially in things like grammar, syntax, composition, the English language, and the use of it. I give them credit for what skills I may have now--all these years later--in writing and in caring about accuracy in spelling and syntax and anything else.

LaBerge: How did you like school?

Belton: I liked it very much. I was younger than most--see, I started school in England, which I guess I mentioned or implied. In England you start at four, so I was a year ahead of everybody else when I arrived in Toronto. They looked at my age and they put me in grade two. After a week the teacher said, "No, no, no, this kid has got to go to grade three. Get him out of here," [laughter] because I knew everything they were talking about and therefore I was getting in trouble.

LaBerge: You were probably raising your hand and answering too much. [laughter]

Belton: "Get this kid out of here," she said. So I was immediately promoted to grade three, and then for the rest of the years, I was a year younger than everybody else and smaller of course. But, nevertheless, I did well and enjoyed it.

LaBerge: What were your favorite subjects or interests?

Belton: You really don't have much choice in grade school--at least in Canada. There were no electives or anything like that. I guess I liked English mostly--reading and writing.

We had an interesting teacher in the sixth grade who was a chess fanatic, and he managed to work chess into practically everything we did. For instance, in arts and crafts he had us all make chess sets and chess boards. The chess sets we made out of empty wooden spools of thread of different sizes and wooden beads and things like that; so we were all sent home to ransack our mothers' sewing kits. If there was a spool of thread that had a little thread left on it, you would decide that that wasn't worth saving and you'd strip it off, and you'd have a new empty spool of thread to use to make your chess set. Then we painted them the appropriate

colors. We made the boards out of masonite, probably, or plywood, and painted them. We had all these piled up in the back of the classroom, and at the end of the day, every day, everybody would start playing instead of dashing out into the playground, because he got us all very enthusiastic about it. We would all dash to the back of the classroom and start playing chess with each other.

There was a year-long tournament--a ladder tournament--in the class, and you'd claw your way up the ladder. Then somebody would unseat you, and you'd claw your way back up the ladder. And this went on for the entire year. It was marvelous. He really managed to make it come alive, and that's the age when--this was grade six--the age when children are most open to things like that.

LaBerge: Do you continue to play chess?

Belton: I wish I had the opportunity. I'm still interested in it, but I haven't the opportunity to keep it up.

LaBerge: There are a couple of books based on chess--mystery books. Do you read mysteries?

Belton: No, but I know what you mean. But I did enjoy the movie *Searching for Bobby Fischer*. There is a renaissance today of young children, especially in inner cities, learning chess and becoming very enthusiastic, and I think that's marvelous. I can relate to that.

Influences ##

LaBerge: Okay, well, we're still in Canada and you were talking about schooling. Were there any other teachers who were influential, or any other adults who had a special effect on you?

Belton: No, I would just, as I said before, give credit to my sixth, seventh, and eighth grade teachers for instilling in me a deep respect for the English language and precision in speech and in writing. It was very strict and they took it very seriously. We would parse sentences until the cows came home. I learned my syntax and my grammar and my spelling--all of which I know very well. I learned it there and I've never forgotten it, and I'm convinced that that's the time and place anybody should learn it--in grade school.

LaBerge: Any other adults who had a great influence on you, either as to what you were going to do with your life? Any of those great-uncles or friends or friends of parents?

Belton: No. I had a scoutmaster and--

LaBerge: Well, tell me about being a scout.

Belton: I enjoyed scouting but I can't think of any special connection there.

LaBerge: Well, your mother, obviously.

Belton: Oh, obviously, because there were just the three of us. We were a little unit. She was a great formative factor, as my father would have been except he had a war to fight. We were just the three of us. And she made very sure that I did all my homework--there was a lot of it--and that I did well in school. She was very determined to do that. And obviously, she and my father both had long-range plans for my getting a higher education, which they had not been able to get. I'm sure that this is not an uncommon sequence of events: if the parents don't have a higher education, they move heaven and earth to make sure the children get it and get the most out of it.

LaBerge: Same thing with your sister?

Belton: Yes, although it turned out she was less academically inclined. She never went to college; she went to --. Well, we'll talk about that when we get to New York.

Reading and Other Pastimes

LaBerge: Okay. What kinds of things did you like to read?

Belton: Everything. There was a library not far from my house and I would go down and check out as many books as I could possibly carry. I think they were very generous in terms of how many you could take. They were mostly adventure stories, travel stories. They were the kind of things you'd expect a person of that age to read, but they were all well written. I read all the classics--you know, the Kiplings and the equivalents of the lesser known Victorian and Edwardian, and this century, too, writers. And then I went on to read their lesser known works, but equally exciting. I'd find an author and read everything he wrote if I liked him.

There was a famous naturalist author--Ernest Thompson Seton. I'll never forget his name: Ernest Thompson Seton. He wrote many books of nature stories, where people were living out in the wilds, and the lives of the grizzly bears and wolves and things like that. Canada's big on grizzly bears and wolves anyway! His books were often heavily illustrated with his drawings of the various nature scenes or the animals and birds being discussed. I read all those books. You're bringing back memories now!

I read all the adventure stories I could get my hands on, but when I think about it, they were well written. I've seen a lot of children's books today that are mostly pictures. My books had very few pictures and a lot of text, and they were written by people who wrote children's literature. For example, Arthur Conan Doyle wrote children's literature, and people of that quality, so that the works didn't patronize the readers. There were a lot of big words in them.

In fact, the best way to build up a vocabulary of a child is to have to look up words and really want to look them up because you want to know: there is a key word in an exciting passage--you want to know what's going on. I'm sure that had, again, an influence in building my vocabulary and my spelling capabilities.

LaBerge: Well, what activities besides the scouts you mentioned? Did you play any sports?

Belton: I don't know about today, but in grade schools in Canada in those days there weren't many organized sports, and they didn't go in for organized teams. There was no Little League, there was no school team other than some very simple ones--no, I don't remember any of that. We just did things as kids together. Basically, we played war.

The War Effort

Belton: I mean, let's face it, there was a war on, and we all had our little toy guns and we ran around shooting each other with cap guns and the losers had to be the Germans. [laughter]

The war also affected us in other ways. We were busy doing things for the "war effort," as it was called. We were constantly collecting things that were useful to the war effort: what we called "silver paper" and you call aluminum foil. I guess we would have called it aluminium foil; they don't say "aluminum" there. [laughter] We collected silver paper; we collected rubber bands; we collected string; we collected scrap metal. This was an ongoing process, and we were great for that. Little kids go around with their noses to the ground anyway and find things. And then it would all get turned in and hopefully went off to do something good for the war effort.

LaBerge: Did you have victory gardens?

Belton: Well, we would have. My mother loved gardening. But we were in a residential part of the city. We lived in an apartment that was upstairs over a store, so there was no outdoor area.

Identity as a British Subject

LaBerge: During that time, and even later, did you feel like a community? Did you feel you were English? Did you feel kind of out of place?

Belton: I guess I always felt English. I was a British subject, and I identified with my father's being in the British army. Let me explain. In Canada in those days, there was really--certainly in British Canada--even my use of the word "British Canada"--there was really no feeling of a separate Canadian identity. It was just a part of the British Empire. Of course, the governmental status was the same as it is today. It was no less independent than it is today, but people didn't think independently; they thought of themselves as members of the British Empire.

The British Empire, of course now long gone, was a very powerful force in the world at that time and had been for generations, but it was in its twilight. We didn't know it, because by 1960 it had pretty well disintegrated. But in the 1940s, it was one of the major players of the

uniforms--little tunics, you know, with pleated skirts. And she had something like two years to go, so she stayed on as a boarding student to finish her four years.

It was just the three of us who came down to New York City to settle in and for me to start a new school. I was sad to leave her and sad to leave my friends and, sure, there was one boy who was a neighbor of mine and we'd been friends all through school and I still remember him. I wonder if he remembers me?

LaBerge: What was his name?

Belton: Jack Barton. I wonder what ever happened to Jack? But anyway, we said good-bye and, you know, life moves on. I'd already had one upheaval in my life when I was chased out of England, and one more upheaval wasn't going to kill me. You learn to adapt.

II LYCÉE FRANÇAIS DE NEW-YORK, 1946-1952

Recommendation from George Steiner's Father

LaBerge: Tell me where you moved in New York and tell me about--I know you went to a French school--and the decision about that.

Belton: Well, there's a story there.

LaBerge: Good. Let's hear it.

Belton: As my father was coming across to New York for the first time in 1946, he was on an ocean liner. That's how everybody got around in those days. He fell in with a very educated German Jew named Steiner. I forget his first name. They were both travelling alone, and they obviously were both interested in similar things and so they started talking about many things. My father asked about his family, and he asked about my father's family, and so forth. And my father learned--he was wondering where I was going to go to school. He wanted to make sure that I had the best opportunities, and he didn't know anything about New York City at that point. Of course, he'd never been to the United States, so it was all new to him.

Steiner said, "Well, my son George attends an unusual school in Manhattan that you might wish to consider." It was called the Lycée Français de New-York. He said, "He's been there for some years now and enjoys it, and I think he's getting an excellent education." So when my father came to New York, he went to this school to see what it was like and to talk to the people there, and he was much impressed by it.

I'll add that George Steiner went on to a brilliant career, and he still is living in England as one of Europe's foremost intellectuals. He's a critic, a writer, an essayist, a lecturer. I just saw him the other day on television again. He made a great career as your typical European intellectual--a man of many parts--doing, writing many things. Mostly he's a social critic and literary critic, but he also writes essays and books and lectures. I didn't know him that well when I got to school because he was several classes ahead of me by then.

LaBerge: But he was one of the reasons you got there.

Belton: Yes, yes, there's no doubt. I'm sure he doesn't know this.

Transition at French Summer Camp on Long Island

Belton: When we arrived--we went down to New York during the summer, I guess it was. No, it must have been June because I went to see the school before the summer break, and I was pretty scared. I was 12 years old, I didn't know any French, and this school was all French. Everything was French. Everything was taught in French. I mean, not only French, [laughter] but mathematics and history and geography and Latin and Greek. It was all taught in French. And all the sciences. This was very intimidating for a 12-year-old. At 12 years old, you're more easily embarrassed than when you're six. When you're six, you just barge in. So, strangely enough, that was a much harder transition for me than coming from England to Canada when I was six. I was really very reluctant to engage in this. But they [my parents] were determined that I should do this, and they arranged what turned out to be an excellent transition. They sent me to a camp that summer before the school started that was run basically by the school or in connection with the school.

It was a French camp out in Long Island--on the north shore of Long Island, called Tower Hill. And what's the name of that town up there? I don't know, it's halfway out on the north shore. A lot of the teachers at the school were counselors at the camp, and a lot of the campers were students at the school, so it was like getting your toe wet without jumping in up to your neck, because we didn't have serious classes. We had camping activities. It was outdoor camping, so we had hikes and barbecues and crafts and arts and all these things. But it was all in French, so it was a good transition. I sort of began picking up the language just by osmosis, without having to write exams and see grades. It was a very well done move, I thought in retrospect. I had a great summer there.

And so, when September came and I started in at the school, I felt a little bit better about it. But I was still pretty unlearned in French.

Fellow Student, Peter Herford

LaBerge: Were there other students who were starting also, or had they all been there all that time?

Belton: No, there were some others--one of whom I'm still close friends with. In fact, here's an e-mail from him right here. [laughter] From Lisbon.

LaBerge: Oh, my.

Belton: He gets around the world.

LaBerge: What's his name?

Belton: Peter Herford. He's now in Lisbon. He was in Croatia for a while. He gets around.

LaBerge: Gosh. So what does he do?

Belton: Oh, he's had a very interesting life. Most of his life he was with CBS News as a producer, and that got him all around the world. And then he retired from CBS News--he's just a couple years younger than I am--and since then, he's been serving as a consultant to fledgling nations that need help in setting up television news services.

At first he was sponsored by USAID. Part of USAID's tasks are to spread democratic procedures around the world as much as possible--U.S. Agency for International Development. One of the things they do is send Americans who are experts in various fields of technology and communications to help newly emerging nations set up similar systems with their own reporters and their own cameramen, on the theory that a free and open press is the best thing for a fledgling democracy.

So in that capacity, Peter has been all over the world. He's been working all over Africa and in the former central Asian Soviet republics, for a couple of years in Croatia, and now he's in Lisbon helping them to set up an all-news television channel in Portugal.

He speaks several languages, and he's had a very interesting life, so I stay in touch with him. But that all started back in 1946 in the French school.

Traditional French Education

LaBerge: And at this point did your mother start speaking French to you at home, or not?

Belton: Yes, mostly to help me with my homework, which I desperately needed at that point because this school--it gave no quarter. I mean, you had to perform. French traditional public education is much stricter--quite a bit more--than even the Canadian and the British. It's very formal. At least it was then--very strict, very regulated by the state. None of this local control that you have in the United States.

It's a centralized nation in many ways. Paris dominates everything--geographically and socially--in France. The French educational system is completely run from Paris. For example, even though we were 3,000 miles away--there are lycées like this all over the world. They are in large part private institutions if they're not in French colonies. If they're in French colonies, then they're obviously part of the French educational system and they're free; but if they're in a foreign country that's not a French colony, like the United States or Latin America or Asia, they're private institutions, but they're closely linked to the French educational system.

All the courses are prescribed--everything comes from France. All the textbooks come from France; and the final coup de grace, as it were, is that all the exams come from France too--at least the final exams--so that if you go through one of these schools, you basically have the same education you would get in Paris. They make sure of that, and the way they do it is by this control. We have a couple of them in San Francisco too, by the way.

LaBerge: Is this one still in New York?

Belton: Yes, it is.

History of the New York Lycée

LaBerge: Where is it located?

Belton: Well, it was then, and it still is, at 3 East 95th Street, which is right off Fifth Avenue. Right off Fifth Avenue, right off the [Central] park. It was a beautiful old mansion that had been converted into a school--a four-story mansion. And the result was that it had a beautiful ballroom downstairs. Originally, it was a ballroom with all marble floors and marble walls and mirrors and chandeliers, and it was the only place we could play basketball. So we played--and I've got photographs. Next time I'll show you photographs of us playing basketball on marble floors with marble walls. [It] looked like Versailles. [laughter] But you know, we did the best we could.

LaBerge: Was it co-ed?

Belton: It was co-ed. It was founded in 1936 by French businessmen, and it was very modest in size for many years; but after the war, when the United Nations was founded here in San Francisco but actually settled in New York, it suddenly had a great influx of students who were children of United Nations officials and delegates, because French was then, and to some extent still is, the second international language. The United Nations delegates from former French colonies, or what were then still French colonies--in Africa, for example--all sent their children there. And a lot of the United Nations delegates from eastern European countries wanted their children to get a European education, and French was often their second or third language after Polish or Czechoslovakian or whatnot, so we had a sudden influx of pupils from all over the world. It was fascinating because my classmates, therefore, were--half of them were from France, but the other half were from anywhere in the world. It was very, very cosmopolitan because of that effect--the United Nations effect.

It ran from kindergarten through 18 years old. It was the full sequence of the lycée. In France, the lycée is the major educational unit before higher education, and it runs in France as in New York: from when you first start school--at four or five years old--until you graduate with your baccalaureate degree--usually about 18.

LaBerge: Which is sort of like 13 grades rather than 12, or 14 or 15?

Belton: Right.

A Formative Influence

Belton: I have a lot to say about the lycée. It was a very formative place.

LaBerge: Well, when I was asking about influences in your younger years--this is the more influential part.

Belton: Yes, no question about it.

##

LaBerge: Okay, tell me--

Belton: How I started at the French School?

LaBerge: Yes.

Belton: Well, it was very scary. As I say, I would go to class and everybody would be parlez-vous-ing all around me, and I wouldn't have the faintest idea what they were talking about. Slowly but surely I began to understand, and grasped not only the language but the subject matter they were talking about. But there were still, at first, a number of instances where exams would be handed out and I couldn't even understand the question, so I would hand in a blank paper. Even though I really had some idea of what was going on, it was hard for me to express it.

Recitation, Dictée, and Composition

Belton: Then a little later, another thing that would happen that was embarrassing for--all this was very embarrassing for a 12-year-old, 13-year-old then. One of the standard things in French education is you learn to recite things by heart. There are a couple of standard things, and that's one of them. And the other one I'll tell you about in a minute.

You learn to recite things by heart, and these are poems. And the poems, of course, are by the great French poets. You start out with La Fontaine and people like that, and then you get to more serious poetry--I mean, more advanced and difficult poetry. But every week you have an assignment: you have to learn a poem, and then when the time comes in class, the teacher will call on people at random to stand up and recite. They made no exceptions for me; that was the understanding. So I'd take this poem home, and my mother and I would sit down and she would read it out loud to me and I would learn it phonetically. But that's really all I was learning. I was learning the noises, the sounds.

So when I was called on, I would stand up and recite it and everybody would expect the worst, but of course I had a good memory and a good ear for sounds, so I was sailing along and repeating the sounds of the words phonetically, not quite sure what they meant, but I was getting away with it. It sounded okay until, inevitably, at some point late in the poem, I'd get a

sound wrong and it would totally demolish the effect because one word would suddenly come out sounding completely wrong and the class would dissolve in laughter.

I would turn red as a beet. The teacher would try to get everybody to calm down and try to encourage me to finish, but at that point, I was overcome with confusion and embarrassment. It was not an experience that I enjoyed, but I remember having to go through it with some frequency.

The other thing that's the mainstay of French education is the *dictée*--dictation. That is also every week, without exception. What happens there is the teacher dictates a text, usually a paragraph or two of prose, to the class, and you have to write it down. Then she collects it, and she sees how close you got to the original. And this is a text that you've never seen before, so you're hearing it for the first time. You have to recognize it just by the sounds, and therefore you have to know how to spell, you have to know the appropriate grammar-- whether you use two *e*'s or one *e*, whether there's an *s* on the silent parts of the grammar--you have to know all that. And it's murder [laughter], especially if I hadn't had a chance to see it before. So I would write the stuff down phonetically, but you can't do that and get away with it because then, you know, you make some really horrendous mistakes. The *dictée* was a feared moment.

And the third--I guess there are three mainstays--the third mainstay of the French basic education is the *composition*--composition. And what that means is a weekly bit of what you would call in this country "creative writing." Once a week, on Friday, she would assign a topic on which to write a composition--an essay of so many words--usually two or three pages, and that you did over the weekend.

Fluency with Mother's Help

Belton: Well, that was a lot easier for me because I had time, I had dictionaries, I had my mother, and I did very well because I was always good at that once I could deal with the mechanics of the language. I didn't have any problem with the ideas and the organization. So, of the three ordeals, that was the least. And in a way, it was the most helpful because that's the one--I think now we should just look ahead a little--that's the one that taught me most about writing. Writing an essay every week, year after year after year, had the--I'm sure, the most profound effect on my writing, which I think is pretty good. But that's how I learned to do it--by writing every week, just by doing. There's no other way to learn how to do creative writing than by doing.

The teacher corrected them very closely. And after a while, I wasn't making mistakes in spelling or grammar or syntax, but there'd be questions about organization, questions about persuasiveness and all that. In other words, more of the substance, the art of writing. They were very good with feedback, and I learned a great deal that way--just by doing.

So during the course of the first year, I had all these difficult moments, but I got the hang of it pretty fast because, although I was 13--that's getting near the end but not beyond the point

at which you can learn a new language easily. I think by the time you're 16, it's probably too late. But I still had enough flexibility in my learning capacities to take it on, so I was very successful with that. I acquired the language. I became fluent in grammar and accent and everything else. It became second nature to me.

Obviously, the easiest time of the day was the one hour a day we studied English. That was by state law: New York State law required that they teach English at least one hour a day. Of course, that was a piece of cake because they were doing English literature at last. So that's when I would usually do my Latin homework--during that class, with one ear open. Every now and then I'd speak up, but I didn't want to dominate the class. It would have been too easy.

Classical Curriculum

LaBerge: So what you were doing was English literature, not grammar or anything like that?

Belton: Yes, well, it was a little of both. But by the time you got to high school it was more--I did my English grammar in grade school. Yes, by then it was literature.

But I had six years of Latin in French. That is to say, you would translate from French into Latin and Latin into French, neither of which was of course my native tongue, so that was interesting. But again, I credit my six years of Latin with an understanding of writing. That also helped my writing, I'm sure of it. Latin's a very demanding enterprise, and you learn things there that you don't learn any other place. Among other things, what you learn is a lot of Latin roots, so you can guess the meaning of a lot of words later on in life. People will always ask me, "What does this word mean?" and I can pretty well come up with the meaning of it from the Latin roots, or sometimes the Greek roots, a few of which I know.

LaBerge: Did you also take Greek?

Belton: No, I didn't. I had my hands full.

LaBerge: Was it offered?

Belton: It was offered. This was a very serious place. And all the sciences were in French. Of course I took all of them and did well in them.

Geography is a major subject in French schools and so I was able to continue my interest in geography. I understand that in United States' schools--as I've seen from my children--it's hardly ever taught. And as a result, Americans, who know little history, know no geography.

LaBerge: Right.

Belton: "Kosovo--where's that?"

"It's in the Balkans."

"The Balkans? Where are they?" [laughter]

So I was able to continue because the French were very serious about geography. We made maps--and admittedly it was focusing on the French Empire, which was also in its decline at that point, but it certainly taught me a lot about the rest of the world.

LaBerge: And was your history French history or world history?

Belton: It was a little of both--again, predominantly French, as you would expect.

LaBerge: To balance off your English history. [laughter]

Belton: Yes, it did. French history is interesting. They've had quite a history.

LaBerge: What sciences did you take?

Belton: Well, I took everything. Everything's mandatory in a lycée.

LaBerge: Okay. Biology, chemistry--

Belton: Yes, you name it--physics. They started that early, and it's more theoretical. They didn't have a tradition of laboratories. We didn't have the space for it anyway. It was really ludicrous what we had in the way of lab space, so it was mostly theoretical, but that was all right too. You can learn quite a bit that way. It would have been considered inadequate in this country where they're interested in lab work, which is fine; but we did what we could and we learned a lot. And we made up for it just by the intensity of the instruction. We had something like eight or ten subjects every year--sometimes 12. And everything was mandatory. There were no options. This went on for year after year.

But by the end of the first year, I was doing very well in grades, and starting then, and really for the rest of the time there I was--

LaBerge: The top of the class.

Belton: I'm afraid so. I won most of the prizes.

LaBerge: I would have guessed it. [laughter]

Belton: Yes, and I can prove all this. I have every report card.

LaBerge: I believe you.

Belton: Every report card I've ever had since I was four. I keep everything. I would win the whole string of prizes. I've got shelves full of books at home that were--

LaBerge: That were your prizes.

Belton: Yes.

A One-Man Social Committee and Athletic Chairman

LaBerge: Well, your parents must have been so proud.

Belton: They were, yes. Yes, they were pleased I did well.

But I also undertook a lot of social activities because I was a very social person, and I could see that these people needed help. [laughter] Well, I mean, by then I'd become something of an American, and they needed somebody to organize things.

LaBerge: Were you one of the only Americans in the class?

Belton: Yes, I was. There were a few others, but they were more nerdy types. I was very social.

LaBerge: And you were never a nerdy type?

Belton: No. No, I worked hard, but I also played hard. That really says it all. I worked hard and I played hard.

LaBerge: It does. I'll put that in the title of this. [laughter]

Belton: Somebody had to get these people organized. They were all intellectuals. The French do that. They had no social life. We had no parties, no dances, no balls, no nothing. We had this beautiful ballroom. I said, "Well, let's have some balls." And so they said, "We don't know how to do this."

I had to arrange everything. I became a one-man social committee, and I even tracked down little musical groups--combos--two or three-man or person groups--that would come and play because I wanted to have live music. In those days we could afford it. It didn't cost much, and we would put on dances several times a year. I had to find all the musicians and get the caterers and do all that.

Then I said we should be playing some American sports, too. They only played soccer.

LaBerge: Where would you play soccer? In Central Park?

Belton: In Central Park, yes. But I said, "You know, these things over here--these are called baseball diamonds, folks. There's a lot of them; they're all empty; we should play a little of that," because at that age I was a big baseball fan. I was a Yankee fan. We never got to baseball, but we had a good softball team, and I arranged for that.

I had to figure out the uniforms. The uniforms we made up ourselves. We didn't have any budget for any of that.

And the basketball team--I got that organized also.

LaBerge: And who would you play?

Belton: Other private schools. They'd kill us.

LaBerge: So you arranged that.

Belton: Yes, oh, yes. I spent my time on the phone: "You want to play us?" At first they didn't think we were serious. Then when we were serious, they took us on and they'd kill us. We were terrible because we were just so incompetent. We had no coaches and all we knew was soccer. All these kids would know was soccer--*le foot*, which is short for *le football*. But I was determined to try and bring some aspects of American culture into the school. And we had good times; we just didn't win anything. It was awful.

LaBerge: Now, was this just the boys, or the girls also?

Belton: Girls also. Mostly the boys in those days. I wasn't in charge of that. There was a woman gym teacher who tried to get the girls following our lead, but they were no better than we were.

LaBerge: So you had P.E. or gym?

Belton: Yes. Oh, they're big on that in France. But we didn't have a gymnasium and we didn't have sports equipment. It was really a shoestring operation. We did the best we could.

LaBerge: How about music? When you mentioned hiring a combo--did you have music in school or did you take any piano lessons or anything like that?

Belton: No, I didn't personally. You have to understand: we were too busy with the academics.

LaBerge: Yes.

Belton: The academics were so heavy, and in France there's no tradition--at least wasn't there--of extracurricular activities. They don't offer art, they don't offer-- Well, there was some art that was mandatory. Everything that we did was mandatory. They didn't have the facilities, the interest, and the money to do any fancy-shmancy extracurricular activities. They were very heavy on the academics.

LaBerge: How many people in the class?

Belton: [laughter] Very few. It got smaller and smaller, too. I guess when I first started out, it was maybe 20, but by the time we got to the last class, there were 12 of us.

LaBerge: Because people moved--

Belton: Yes.

LaBerge: Or it was so difficult?

Belton: Well, no, because the school grew as we went through. All the classes were 12 when I got there, but then the school grew in the lower grades and so the lower grades became larger.

Specialization in the Last Two Years

Belton: And even the final class of 12 was divided into three groups, because in the final year--or final two years, I forget--you're allowed to specialize. You can opt for a program called philosophy and letters, which is what I did; then another one called experimental sciences, which is mostly physics, chemistry, and biology; and then the third one is mathematics. And so, in the final year or two, there's a little bit of specialization allowed.

Now even the kids in mathematics had to take philosophy, but less of it. And even we had to take some math, but less of it. It was that sort of thing. It was just a little bit of concentration at the very end as a gesture to the fact that you were going to have to go out and make a living somehow, and you needed something specific, maybe. Those who were going to go on and be doctors, they would take experimental sciences, and so forth. But I was going to be a lawyer, so I figured--

LaBerge: You always knew you were going to be a lawyer?

Belton: I pretty well did, yes. I'm not sure when the thought entered my mind, but certainly by the time I was in my last couple of years there, I knew I was going to go to law school.

LaBerge: I think I'm going to save that story for next time.

Belton: Okay. What else about the lycée?

Teachers and Vacations

LaBerge: Any particular teachers who were influential?

Belton: Oh, yes. They were all characters. And there weren't many of them. It was a small school.

LaBerge: Yes, right.

Belton: Many of them had been there for year after year, and sometimes you'd have the same teacher for four or five years in a row: there was only one Latin teacher, for example. And the French teacher, Madame Begué--I had her for several years. We were terrified of them, yet we respected them. We were always trying to put one over on them, and rarely succeeded. We thought they were oppressive and working us much too hard, but in retrospect, I'm very glad that they did. It taught me that children can work much harder in schools than unfortunately they do today. It didn't kill us; we still had a good time.

But of course, there was no television. It hadn't been invented, and so there was very little distraction. About the only time we had any distraction was when we were doing some sports or going to the occasional movie. When I see how little they demand of kids today--how little is demanded of them in general, it's sad because the human mind can absorb more and put out

more. The formative years--that's the time to do it. You've got to have high standards and hold them to it. It may seem difficult at the time, but in retrospect, it's always worth it. Childhood goes past so quickly. You don't want to waste those years.

I had all my summers to play. There was no summer school. We didn't need summer school. Nowadays they do so little in the regular school, they often have to go to summer school. I saw in the paper the other day how much of that is going to be done. No more social promotions--everybody goes to summer school. But we didn't do that. When the school broke up, boy, we were ready for vacation and we vacated! And we did that hard, too. I haven't told you about my summer vacations.

LaBerge: No.

Belton: But they were a real break. I didn't do anything intellectual. Rested the brain and came back refreshed and hit the books. Seemed to me--maybe there's another way of doing it, but seemed to me, that way works. It's too bad it's been abandoned. Yes, I know, I sound so old-fashioned.

LaBerge: No, no, you don't. How about if we stop there, and next time we can start with New York City in general, your vacations--

Belton: And we can segue into law school.

LaBerge: Yes, and how you decided that.

Belton: That was another experience. Well, polio comes along in the middle of that.

LaBerge: That's right. That's a whole other thing.

Belton: Yes, not in law school; I meant college. Polio came in the middle of college. That's a whole other ball game.

Living in Queens, New York

[Interview 2: July 28, 1999]

LaBerge: Well, when we finished last time, I'm pretty sure we finished talking about high school--not the graduation or what you were going to do later. Let's talk about New York City and what that was like to live in New York City.

Belton: Okay. Throughout the years that I attended the lycée, we lived out in Queens in a series of houses that we bought--two or three of them. I had to commute from Queens to upper Manhattan, where the lycée was located, and that was a long commute every day. It required about 30 minutes on the subway at the maximum commute hours, so the subways were absolutely crush-packed full, and it was standing room only--if you were lucky. Then I got off at the Fifth Avenue and 52nd Street station, and things improved greatly. I was able to take the Fifth Avenue bus all the way up Fifth Avenue from 52nd to 95th, running right along the park.

When I first started at the lycée, especially the summertime, they had open-top double-deckers. [laughter] They were going uptown, so they were empty. I would rush onto the bus and up to the top of the second level and rush right to the front seat and sit back. I had the whole top deck to myself, looking out on the park as we went up the street--up Fifth Avenue. It was very pleasant, indeed, and a nice way to start the day. On a spring morning, New York is beautiful. Then coming home, I came down a bus again and back home on the subway.

So that was a long trip, and it meant that I didn't have much opportunity to interact with my classmates after school because, being an urban school, the students came from all over the city, and there weren't any that came from my neighborhood. I had a different set of friends back at my home, but I didn't have much time for them anyway because the homework was so substantial.

Family Life

LaBerge: Well, what was that change like--to move from Toronto to New York? Did you play tourist with your parents, or did you go to all the sights? Did you go to the theater?

Belton: Well, at the risk of repeating myself, there was so much work to do at the lycée that I really didn't have time for that. We did the basic tourist things maybe once. If any visiting friends came, you'd take them to the Statue of Liberty and so forth. So that's how I saw things, but I never got on the Staten Island Ferry in my life. I still haven't gone on the Staten Island Ferry. When you live in a city, you often don't do the most obvious tourist things.

So, there wasn't a great deal of difference. Toronto was a good-sized city then, too, and, although New York is much bigger, Queens, where I lived, was more residential. There were parks, and it was more like a medium-sized city out in Queens. That's why we lived there: because it was a nicer place to live. My father worked all the way downtown--down near Wall Street. 61 Broadway was the address of his business, I remember, and so he commuted with me in the morning, and I got off, as I say, at 52nd Street. He stayed on all the way to the end of the line practically, so he had a long commute.

I got home by about 3:15 usually, or so, and started my homework. My father would work very late because he worked very hard, even though he was the boss. In fact, that was why he worked late: because he wanted to make sure everything was done. He was a perfectionist, like I am. He would work long after everybody else had left the office, and he never got home until about eight-thirty or nine every night, at which time he would grab something to eat. I was still doing homework.

So I didn't have much chance to interact with him, to my regret, during the week. But on weekends--at least he did not work Saturdays and Sundays--that was the time to do family chores and also to do some family trips. In good weather, we'd drive out in the country--out in

Long Island. Since you're already on Long Island in Queens, you just keep on going and go to the beach or sit in the parks and do all the things that Long Island had to offer then.

But he had his chores to do, too. He was a very meticulous dresser, being English. He had a beautiful set of handmade clothes--suits and shoes--shoes, even!--that every weekend he would polish very carefully--every pair of shoes. He'd have five or six pairs of shoes to polish every weekend, and he'd do that, and I'd watch him and talk with him at the time if I wasn't otherwise occupied. So, weekends were for family events. That was about the only time we had.

LaBerge: And your mother--I remember you saying your mother had to work the whole time you were in Canada. Did she continue?

Belton: No, no, she didn't. They were European, and in those days for Europeans--the father was the breadwinner and the mother was the homemaker. So my mother became a homemaker and stayed home. And this house--in fact, all two or three houses that we lived in there--had nice gardens, and she spent a lot of time in the garden. She loved to garden. She would basically take care of the house and be ready for me when I came home.

Now, remember, when I first started at the lycée I needed a lot of help with French, and so she had to be there when I got home because we had a lot of homework to do together. She would explain to me what it was all about and help me with understanding the language. Of course, that got less and less necessary as time went by and I got the hang of it. But she did continue--just to keep her hand in--some French tutoring of young people around the neighborhood--just to keep doing it because she liked to do that.

And you want to know about my sister?

LaBerge: What about your sister, because she stayed back in Canada?

Belton: Yes, my sister Suzanne is four years older than I am. I'm glad to say she still lives. She stayed on at the girls' private high school in Toronto until she graduated. I think it was a year or two after we got back to New York.

Then the question was whether she was going to go to college or do something else, and she decided she would like to have a career in secretarial work. And the best secretarial school then, and still now, I think, was a school called Katherine Gibbs. That's Katherine with a K. Katherine Gibbs in New York. It's a very famous secretarial school. It's a two-year program, and they teach you more than just being a secretary. They also teach you general education and various social pointers and things of that nature, and they turn out graduates who are in great demand in the business world. It's easy to get a job if you have a Katherine Gibbs degree. So she did that for two years. That was in New York City--in Manhattan. She lived at home with us and commuted. After two years there, she started her career in business, and she did that all her life in various places.

LaBerge: So she stayed in the United States also?

Belton: Oh, yes. She lived in New York City until she retired--almost until she retired. Then she and her husband Roger moved down to Florida, where actually her children live too; so that branch of the family is all settled in Florida. It's a long way away. I don't see her very often, unfortunately. They live in Fort Myers, on the Gulf Coast. She has two children, Jackie and Paul, and five grandchildren; she's very busy in many ways, and being with them is one of them.

The College Decision

LaBerge: Well, all during this time that you were going to school, you knew you were going to college--is that right?

Belton: Yes, it is.

LaBerge: [laughter] This is sounding like a courtroom.

Belton: That's fine.

LaBerge: Tell me about what influences your family had on that, or was it just within you--you knew you wanted to continue?

Belton: That just came from me because, I think I've told you, neither of my parents went to college. They had to work. They both came from humble origins and didn't have any family money to send them to college. And in England, that was usually reserved for a smaller elite group anyway than in the United States, so it never occurred to them. And my sister, as I say, had decided before I had the choice--since she's four years older--that she wasn't going to college; so I was the first one to go.

They obviously had understood by then--my parents--that it was one of the keys to success in America. And since we were here to stay, it seemed logical that I should follow the normal route, which was to go to college. Once we decided on that, and I agreed with that, then it was just a question of which college to go to and what to study.

LaBerge: So how did you choose Harvard?

Belton: It's easy. They said, "Well, let's go to the best." [laughter]

LaBerge: That's right. Where else did you apply?

Belton: Yale and Princeton, I think. I don't remember exactly because I only wanted to go to Harvard. And I was accepted. Now, I have to emphasize that I was accepted as a sophomore because--well, we really should go back a little and talk about why--

LaBerge: Yes, okay.

Baccalaureate from the Lycée Français

Belton: Talk about my graduation from the lycée.

LaBerge: Okay, let's do that.

Belton: The French educational system culminates at the secondary school level--culminates in an examination called the baccalaureate. The baccalaureate is the crown jewel of the French educational system; and until the middle of this century, that was about as far as anybody went to school in France either. University was, again, for the elite. That, I understand, has changed, but at that time when I was there, it was a very big event. And I'm sure it still is. So big that the exam is divided into two different years.

At the end of the year before the last--the penultimate year--you take the first half of the baccalaureate, then you have one more year of schooling if you pass it. And then you take the second half of the baccalaureate at the end of your second year--your final year.

So I took both parts, of course, and I passed them both, and I did quite well. It's a typical European exam in the sense that it's both written and oral and it runs for several days, and it's a real ordeal.

They test you on absolutely everything. Of course, in the oral part you have to get up and explain it all in French. They'll ask you questions of science or history or geography or French or grammar, and you have to discuss it all in French with the examiners. And then the written tests run for hours.

As I told you earlier, the tests are, in fact, administered from France, and the questions are sent from France. The French government has a very centralized attitude towards education and they keep a firm hand, even out in the colonies, as one might call New York in this case, or the real colonies, which are scattered around the former French Empire. This exam is given anywhere there are lycées. And, at least in those days, the questions came directly from France. They're corrected locally, but they are regulated from Paris. My diploma, which I have at home, is issued by the University of Paris in this case.

So I passed that. And the American universities understand what that signifies, so you get credit for that in any American university that I know of. In the Ivy League, they give you one year credit, and in some of the other colleges, I could have had two years of credit.

LaBerge: Is it like a 13th year of high school?

Belton: Yes, well, it's either that or a first year of college.

LaBerge: Okay, yes.

Belton: They treat it as the equivalent of having had a year of college, so you start as a sophomore in the Ivy League.

III HARVARD COLLEGE AND LAW SCHOOL; CONTRACTING POLIO, 1952-1957

Entering Harvard as a Sophomore

Belton: At Harvard I started as a sophomore. Harvard is set up so that the freshmen all live in what's called Harvard Yard--in the very old dormitories that date back to the 17th century. Then the upper classmen--the sophomores, juniors and seniors--all live in what are called the houses, which are down on the Charles River, and which were built in the late twenties and early thirties. It's a different--immediately different world. I missed the experience of being a freshman at Harvard, but, from what I understand, it's not much fun--like being a freshman at any school; so I'm not sure I missed much. I started out as an upperclassman, which was the way to go. And we had very nice quarters, indeed.

LaBerge: So what house were you in?

Belton: Dunster, which is one of the beautiful houses on the river. Now in those days, it was not co-educational because Harvard was for men and Radcliffe was for women. That has changed since, and now the schools are integrated and so are the houses; but that wasn't the case then.

Majoring in Philosophy

LaBerge: What did you plan on majoring in?

Belton: Well, I really didn't have any idea. I got there, and I had to make a decision because I was already an upperclassman. I said, "You guys have a French major?" And they said yes, so I said, "Okay, let's do that."

Well, when my parents found out about that, I quickly changed majors because I knew as much as the professor, and it wouldn't have been much of a challenge. But you know how young people are: you always look for the easiest way.

I switched to philosophy, which was the other thing that I knew from the lycée. My last year at the lycée was called *Philosophie*, and we focused on French philosophy. But Harvard

had a big and very well-reputed philosophy department, so that was a solid major. I did that for the three years I was there.

Now, of course, at Harvard, as at most colleges, you have to take courses in other departments too, but I concentrated on philosophy. And it taught me how to think and how to reason and how to write, which really was just continuing the education that I'd started in the lycée in those very same things.

LaBerge: Was it a challenge, or not?

Belton: Not really. I will admit. I will admit, it wasn't a hard time. I enjoyed it. I specialized more in metaphysics and existential philosophy than theory of knowledge, which is the contemporary American philosophy. I got to think deep thoughts about great questions and read the great writers--starting with Aristotle and Plato and going on up through the moderns. But it wasn't difficult.

Extracurricular Activities

LaBerge: So did you have time for outside activities?

Belton: Yes, I certainly did.

LaBerge: What did you do?

Belton: Well, there was so much to do. It was the first time I'd been in a school that big in my life. Coming from the lycée with 12 students in my class and going to a school where my class was probably 1,100 all together, it was quite a shock. There were so many activities, I hardly knew where to turn. And it's a beautiful place. The countryside is not far away, and I had a little old car, a 1947 Nash sedan, that my father gave me. It was his car and he didn't use it anymore. So I went and checked out the scenery and did a lot of hiking and picnicking out in the countryside.

LaBerge: Had you ever been to Boston before you went?

Belton: No, and there were many things to see there too. It's a beautiful old city with lots to do. And there was a lot of social activity at the house--at Dunster House. There were dances and there were seminars and clubs, and I joined this club and that club. I don't remember how many now. I was always interested in photography, so there was a filmmaking club and I joined that. And somehow the years passed.

LaBerge: What about sporting events? Did everybody go to the football games or the rugby games?

Belton: Oh, yes--you mean as a spectator.

LaBerge: As a spectator, yes.



Peter and Marie-Madeleine Belton in the French Alps, August 1951.



Frederick William and Marie-Madeleine Belton at Dunster House, Harvard College, December 1953.

Belton: As a spectator, yes, I went to the football games--at least the home games and one or two of the away games. It just was the thing to do.

LaBerge: Yes, that's what I wondered.

Belton: Yes, you had a date and you'd double date, triple date--whatever--and you all went to the football game. You froze, usually, because this was New England. But that was the only sporting event. I never was that interested in sports; I didn't participate in any sports. At the lycée I did because it was much lower key, but in college, of course, it's very serious. And I was not that kind of person. I had other things to do in life.

LaBerge: How about the theater or concerts or anything? Did your interests start back then, or not?

Belton: In a small way, yes. Harvard is a place where touring groups come often to perform, so there's a constant stream of groups or speakers from the outside. I remember one day we went to hear Pete Seeger, who was then in his prime. There were also lectures from visiting lecturers of various sorts--many of whom were interesting. We went to those, but there was just so many different things to do. You did a little of everything and not any one particular thing. I was like a kid in a candy store, let me tell you. That lasted for two years, and then polio struck.

Sailboat Crew in the Caribbean, Summer 1954

LaBerge: Tell me about that.

Belton: Well, that's a different subject. I'm not sure how much detail you want me to go into. It happened in the summertime of 1954. One had to do something in the summertime. In the summer between my junior and senior years, I learned about a sailing cruise that was going to take place in the Caribbean. I'd always been interested in ships, and sailing ships in particular--just one of my interests--so I applied and was accepted.

This sailing ship, called *The Caribee*, was a good size. It was about 95 feet long. It was a schooner, based down in the Caribbean. What they would do--the owners--a husband and wife, and a mate--the three of them would take on crews of college kids every summer for three, four, five, six-week trips around the Caribbean. You'd pay your way, but you also had to sail the ship, so it was like a working vacation. Didn't cost a lot of money and you got all the experience. It sounded great, so I signed up for that, with, of course, my parents' support.

Flew down to Miami, got on board, and we set sail. There were maybe 20 college students--all pretty well Ivy League kids--men and women--some of whom had experience sailing. I had sailed small craft but never anything like this. Most of them hadn't any experience sailing big craft.

LaBerge: Where had you sailed before?

Belton: Oh, just around Marblehead Harbor up north of Boston. I had a very close friend named Helena Lewis whose family had a boat, but it was 210 Class, only 22 feet long; it wasn't anything like this.

We sailed out of Miami. It was a learning experience. As you went, you learned. Unfortunately, on the second night out, we had a very bad storm, so we all had to learn very fast. [laughter]

You'd sail 24 hours a day, so you divided up into watches. It would rotate around. Some nights you'd have a night watch, sometimes a day watch; and I had a night watch in that storm. We had to climb the rigging. The ship had a square sail on it with a yardarm, and we had to furl the square sail because the wind was getting too strong. And that was quite a baptism, hanging on the yardarm 40 or 50 feet above the ocean with the ship swinging underneath you wildly from left to right and the wind howling and pitch dark, the rain pouring, trying to pull up the sail. It was exciting. But that's what I was there for, so it was great. I loved it.

Sailors in Ports of the Caribbean

Belton: And we sailed on. We planned a route around the Caribbean, and we stopped first at Nassau. At Nassau, which is the capital of the Bahamas, the governor-general--British governor-general--was a friend of my father's, so I went over to Government House, as it was called, and introduced myself. I was shown around and wined and dined, and I thought this was pretty swell. This was almost like in colonial days back in 1950--when are we now? The summer of '54. Correct. I rented a little car, a red Austin convertible, and we proceeded to do what sailors do when you get to port [laughter], which was to see the town and check out all the nightclubs. And--. Do you want to hear all this story?

LaBerge: Yes I do! As much as you'd like to tell.

Belton: It's so embarrassing, so stupid. Anyway, I had too much to drink. Rum. It was the big thing. Well, what do I know about rum?

LaBerge: Right, I do know. I've been to Jamaica.

Belton: Yes, well, I'd drunk beer and wine, but nobody had any of that; they just had rum. It didn't take many of those.

We came back to the ship long after dark and--God! The ship was tied up to a pier-- alongside a pier--and the tide had changed while we were out carousing. The ship had drifted about a yard away from the pier, but I didn't notice that. I stepped boldly forth onto the railing of the ship, but it wasn't there. This is now one o'clock in the morning. I fell forwards and landed on my ribs across the railing--which was a broad mahogany railing about eight, ten inches wide--from my full height, because the tide had gone out and the ship was now down to about the level of my feet.

It knocked the wind out of me, and I teetered on the railing. I could have rolled either way. If I'd rolled backwards, I would have disappeared into the water, and I wouldn't be giving you this story today because nobody else was sober enough to fish me out. They wouldn't even have noticed. [phone interruption about access to Florence Gould Theatre at the Legion of Honor Museum] Instead, I rolled inwards and fell on the deck, gasping. I thought I just had a bad bruise and would be okay. The next morning I had sobered up as everybody else had, and we sailed on.

We started sailing down through the archipelago of the Bahamas, which are many, many islands. A couple of days later, however, I developed a really sharp pain in my right ribs where I'd landed on the railing. Every time I took a breath, it hurt. We didn't have a doctor on board, and the consensus was I must have broken a rib. What do we do about it? We're in the middle of nowhere.

Well, we sailed on a bit more and found an island that had a radio telephone. They telephoned the governor-general and said, "Peter needs to be evacuated." So the governor-general sent down a seaplane.

LaBerge: This was your father's friend?

Belton: Yes. Sent a seaplane, which came alongside. I had to be transported on a stretcher--and that hurt--out of our ship into this seaplane. It was the kind of seaplane that didn't sit on pontoons; it sat right on the water. It was a Grumman Widgeon. When it took off--that's the first time I'd ever taken off in one of those planes--it goes smack-smack-smack-smack across the tops of the waves until it finally becomes airborne. Every smack hurt. But we got airborne, flew back to Nassau; they put me in the hospital, x-rayed me, and there was nothing broken; it was just a bad bone bruise.

Meanwhile, the ship continued to sail on without me because we didn't know how long I was going to be gone. I took a couple of days to recover and get my bruise treated, and then I was ready to meet up with the ship again. This is a long story!

LaBerge: That's fine.

Belton: But there's a point coming.

I had to find out where they were and try and connect with them again.

LaBerge: None of this is easy. I'm thinking, too, there were all these payments and calls and health insurance issues, right?

Belton: None of that, none of that. No, the governor-general just--

LaBerge: Just took care of it?

Belton: Took care of it, yes, although my father reimbursed him. Anyway, I looked at the itinerary, and I figured out that I could meet the ship in Port-au-Prince, Haiti, which is the capital of Haiti. That was a big enough city that there was a commercial flight from Nassau to Port-au-Prince,

so I took a commercial flight. But I wasn't sure when the ship was going to get there, so I decided to get there early and wait for it, to make sure I didn't miss it.

There was no way I could communicate with the ship. We had a radio telephone on board that had a radio signal range of about 100 yards, [laughter] so that wasn't much good.

A Fateful Meal in Port-au-Prince, Haiti

Belton: I flew to Port-au-Prince and landed in the commercial plane. Of course, I spoke fluent French, which is the language of Haiti, so there was no problem. I just pretended I was a Frenchman and I was well received. I didn't have a lot of money with me because I just grabbed a few dollars when I left, and I think the Governor gave me a few more. I didn't know how long I was going to be there, so I decided I'd better stay at an inexpensive hotel.

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Belton: I found myself a businessman's hotel that was full of Haitian businessmen. That was fine, so I stayed there for a couple of days. I slept there and I ate there. During those couple of days, I walked all over Port-au-Prince, which was fascinating in those days. There was lots to see. It was like being in an African city, with a great central market and much to see--artwork everywhere, and music. It was quite a place. But unfortunately, I apparently picked up the polio virus eating at the restaurant of the hotel.

LaBerge: Oh.

Belton: That's where I got it. That's the point of the story.

LaBerge: I didn't know you could pick it up by eating.

Belton: That's the primary way you can pick it up.

LaBerge: Really. I guess I've always heard about swimming, but I--

Belton: But the polio virus has to go in the mouth. Mouth or nose.

LaBerge: Yes.

Belton: It has to go in the mouth or nose. You don't get stung by a mosquito or anything like that. It has to get into your digestive tract. And if you get it swimming, it's because you swallowed some water. Probably I got it from fresh vegetables or salads that had been washed in water that wasn't free of polio virus.

Now, it didn't bother the Haitians much because they'd all--almost everybody down there was naturally immune to it. Not everybody; they had polio down there, but not as much. But I, of course, had no defenses. It didn't take much to hit me.

It has an incubation period of a couple of weeks, but I didn't know that at the time. I felt fine. The ship came in a few days later, and I got on board and we partied one last round of parties in Port-au-Prince, which was even more fun. [laughter] I'll skip the details of that! Then we started sailing again for the rest of the cruise to come back to Miami.

Landing in Miami with Symptoms of the Polio Virus

Belton: We went to Jamaica and stopped there, and then we sailed around here and there. Eventually, we got back to Miami, and it's lucky--I was lucky a couple of times--that the incubation period was as long as it was, because if it had been shorter, I probably would have become acutely ill in the middle of nowhere in the Caribbean on a ship that didn't have a radio that could reach far enough to get help. And again, I might not be here today because I got in trouble pretty fast once I became acute.

Luckily though, I got back to Miami, and I was staying with a friend. It was the next day that I woke up with a terrible headache and a feeling of shaking and fever. I thought I was just having a headache with a fever, but this was Florida and this was 1954 and polio was everywhere.

There had been round after round, year after year in the early fifties, of polio epidemics. That was the height of it. My friend got it in 1952, and it was everywhere, so his parents took one look at me and said, "We'd better take you into the hospital to have you tested." And I said, "No, I don't feel that bad."

LaBerge: So they suspected?

Belton: Yes, they did because in Florida at that time, everybody suspected it. I guess they recognized the symptoms from having read about them or had friends who caught it. So they took me into the hospital. There they did a spinal tap, and that proved it. The spinal tap showed a high concentration of white blood cells in the spinal fluid, which means that the viruses were there. You can't see the virus, but you can see the white blood cells that come to fight the virus. So if you have an abnormally high concentration of white blood cells, you know that there's something that they're fighting. And everything else pointed to polio.

If you had to have polio, of course, that was the place to do it because they'd had so much of it, they were highly experienced in dealing with it.

The Polio Crisis

LaBerge: Why more in Florida than, for instance, New York?

Belton: I don't know. It seems to have affinity to tropical areas, although New York was bad, too. I mean, we forget. All the big cities were bad. Let me explain. This was exactly one year before the polio shots were invented. I missed it by a year. It was '54 and the Salk vaccine came out in '55--the spring of '55, I think it was. Nobody was vaccinated in the summer of '54. The summer of '54 was the last bad summer. But somebody has to be last, like somebody's always killed on the last day of the war. I'm not complaining.

I was put in the polio hospital there called--it was a children's hospital, actually, run by the Variety Clubs of America, so it was called Variety Children's Hospital in a suburb of Miami called Coral Gables. A children's hospital, because polio had started out as a children's disease.

LaBerge: Yes.

Belton: "Infantile paralysis," it was called. But by then it was already a young adult disease too, and most of the people in my ward were in their twenties, like I was. I was just 20. There were a lot of young adults.

I went to sleep the night that they put me there, and this was only two nights after I got back to Miami. I woke up the next morning and couldn't move my legs.

LaBerge: Oh.

Belton: What was happening was that the virus was doing its damage during the night, and in the morning I couldn't move my legs. But that was not the half of it. After a while, I had trouble breathing--within hours--and so obviously I was getting into a very dangerous situation. They watched over me closely, and when the breathing got to be so weak that I couldn't make it on my own, I was put in an iron lung. My temperature continued to rise and rise; it got up to 104 [degrees] and I was burning up, so they packed me in ice inside the iron lung. Ice bags. They pack your body in ice. At that point, I couldn't move anything. And I couldn't breath except for the iron lung.

My mother had flown down a day or so before from New York. They called her and said, "We have a problem. You'd better get down here." Nobody knew how bad it was, so she came down first, and then a couple of days later, when it was getting worse and worse, she called my father and she said, "You'd better come too, because he may not make it."

I was getting to the crisis point, where the temperature was continuing to go up. There wasn't anything they could do. It's a virus. There still is nothing you can do. If you get polio today, there's nothing you can do.

LaBerge: Nothing you can do to stop--

Belton: No, once you've got it, you're in trouble. But the disease itself only lasts about ten days. People don't realize that. After ten days, you're either dead or you've survived. It runs its course. The virus is either destroyed and defeated by your body, or it wins.

It was about the tenth day and I was at that crisis moment, and no one knew, including the doctors, whether I was going to make it or not. My mother would stay in the hospital all day



Peter Belton & Anita Padilla at Costume Ball, Dunster House, Harvard College, December, 1953.



Wedding of Suzanne Belton (Peter's sister) & Roger Boutin, Coral Gables, Florida, 12/24/54 (l. to r., F.W. Belton, Suzanne Belton, M-M. Belton, Roger Boutin)

with me. She took an apartment right nearby, and she was there all day everyday, bathing my forehead. That's about all she could do. And making sure they packed me in ice, again.

My father took a night flight down, and when he got on the plane, as he told me later, he said, "I didn't know if I was going to see you alive." It could have gone either way. But during the night--that very night--my temperature broke and started to come down. My body had won. And it dropped pretty fast--two or three degrees just in an hour or two. So when he came in in the morning to see me for the first time on the ward, they pointed me out, "He's in that iron lung over there." He saw the doctor leaning on the iron lung chatting with me with a big smile on his face, and my father said, "I knew it was going to be all right."

The doctor said, "He's going to be okay. He's going to make it," because I'd survived the crisis.

LaBerge: Were you aware all during that? I mean, did you know?

Belton: No, not really.

LaBerge: You've just been told this?

Belton: I didn't know any of this. All I knew was I was very sick, and when your temperature gets to that degree, you begin to get delirious anyway.

LaBerge: Yes.

Belton: And I couldn't move. It was terrifying. It was completely unreal. Your whole--

[phone interruption: a call about a new gearbox for the electric wheelchair]

LaBerge: Your father came in and saw the doctor smiling, so he knew it was going to be all right.

Belton: Right.

Long Process of Rehabilitation

LaBerge: And you were also telling me that you didn't really know what was happening, but you were scared.

Belton: Yes. But after the temperature started to drop, then my head cleared, and I went on with what had to be done.

Well, what has to be done at that point is that you have to begin the process of rehabilitation, which is a long, difficult process depending on what condition you're left in. The first thing you have to do is to get out of the iron lung. You've got to get out as fast as you can because once you become dependent on it, you may never get out. Some people never did.

That's a process--every day they would turn the lung off for a while and you'd be on your own, and they'd watch you and when you'd turn blue, they'd turn it back on again. It was frightening because when they turned it off, you suddenly realized, "I'm not sure I can breathe by myself," and it's very scary, especially when you're 20 years old. Oh, actually I had my 21st birthday in the iron lung, which is not a place I planned to spend my 21st birthday.

LaBerge: Yes, I'm sure.

Belton: Right, let's see. The trip was in June, and I was hospitalized in July, and so when August came around, I was still in the iron lung. It took me about a month to get out of the lung, bit by bit, a little more every day.

Then you go on to something called a rocking bed--the next device. And that's a device--it looks like a regular twin bed sitting on a teeter-totter, and it's all mechanical. It has a motor, and they turn on a switch and the bed rocks: the head goes down and the feet go up, and then the feet go down and the head goes up. And it does it at the rate--they can set the rate, and they do it at the rate that you breathe.

It's just sheer mechanics. Every time your feet go down, your entrails slide down inside your body and draw down the diaphragm, and that draws in air. Then when your feet go up, the entrails slide up inside your body, and they press up against the diaphragm and expel the air.

You learn how to sleep in that thing with it rocking. You learn how to eat and drink in that thing with it rocking. You had to learn a lot of new tricks. Of course, in the iron lung you've got to learn a lot of tricks, too.

LaBerge: In the iron lung how do you eat? Intravenously?

Belton: No, some nurse stands there and feeds you. Since the iron lung--what happens is it makes you breathe at a certain rate. Down at the bottom end, there's a big diaphragm, and the diaphragm goes out and in. When it goes out, it creates a negative pressure inside the lung--the machine--and that draws air in through your mouth. And with the positive pressure, it expels it, so you can only eat when it lets you.

More importantly, you discover you can only talk when it lets you. You also discover something you've never known but everybody does it, and that is you only talk while you're exhaling. You never talk while you're inhaling [spoken in a high pitch hoarse voice] because if you do, it sounds like this. [laughter] And since this thing would exhale and inhale regularly, you were reduced to short sentences, so you all become Ernest Hemingway stylists--speaking in Hemingway sentences, short and snappy, which is something I should have learned and remembered for my work at the court.

LaBerge: [laughter] This was probably a reaction.

Belton: Yes. No run-on sentences with an iron lung. It cuts you off. Anyway, eventually I got off the rocking bed too, and I was able to breathe on my own, and I was put on a regular bed. Then

you begin the process of recovering from the polio attack, which means basically getting as much strength back as you can. You never know when you start the process how much you're going to get back. It depends on how serious the damage is inside the spinal column. Nobody knows that until you start trying things.

Meanwhile you've gotten tight as a drum. All your joints and muscles are tight from being immobile, so that has to be all stretched out. They do that under water and they do it on top of water and they do it on tables. It hurts. And you have to learn how to stand up again on a "tilting board," and you have to learn how to move what you've got left. It's a long, complicated process. It takes about six months of intense rehabilitation.

After the six months, you've probably got back about all you're going to get back, because any weakness remaining after that is going to be permanent, so then they pat you on the head and send you home. Nothing more they can do for you.

Institute of Physical Medicine and Rehabilitation, New York

LaBerge: Did you do all your rehabilitation right there?

Belton: In Florida, at the same hospital, yes. I wasn't in any condition to be moved. But just after Christmas in 1954, I was able to be flown back to New York because I was able to be up and about. I had a wheelchair and braces, and at least I could spend time seated, dressed, for enough time to get back to New York.

My father flew down--now during the entire time, I must say, in the fall that I was there--those six months--my mother stayed right there on the scene at this nearby apartment, and she came in every day to help. And she turned out to be a big help for the nurses. She would not only help me, but she would help all the other guys in the room. She'd run around, and she'd take them their urinals and she'd bring them their soup and she'd feed them and she'd call the nurse when there was something she couldn't do. Basically, she just pitched right in to be a big help, which is what I would have expected of her.

But in New York, there was a major rehabilitation institution--still is--called the IPMR, the Institute of Physical Medicine and Rehabilitation--the IPM, for short--founded by a fellow named Dr. Howard Rusk, who was one of the great early leaders in the physical rehabilitation movement. This was famous worldwide. It was just a couple of blocks from the UN building, on 42nd Street there. And it had a worldwide reputation. Doctors came from all over the world, and patients too. It's just for rehabilitation.

So, in the hope that they could get some more rehabilitation for me and maybe some more strength back or some more skills, I was put in the IPM for that spring--the spring of 1955--as an in-patient.

Now at this point, my parents sold their house out in Queens so as to be closer to me. They took an apartment down in Gramercy Park, which is at Lexington Avenue and 22nd Street in New York. That was just 20 blocks from the IPM, so my mother would come up every day and, again, do the same thing: help me and help all the others in the room.

That was non-stop rehabilitation--physical rehabilitation. We had a swimming pool, we had all kinds of exercise tables. Then you had what is called occupational therapy, which was teaching you the skills of daily living: how to get dressed and undressed and get on and off the chair and whatever else you could do--all the things you needed to get through life. I did that all spring of 1955. I'd taken a year off from college, obviously, for this.

LaBerge: Yes, but what happened with all of that?

Belton: Well, we just wrote to Harvard and said, "He can't come this year. Can he take a year off--a year's leave of absence?" And they said, "Of course," so my class went ahead and graduated without me. I missed that whole year, but I was determined to get back to school in that September of 1955.

Self-Motivation and Parental Support

LaBerge: Was it one of the things that motivated you?

Belton: Yes. I was determined to get back to school. I didn't know how I could do it. I didn't know how far I was going to get. I didn't even know how rehabilitated I would be, but I was determined to do as much as I could in order to get back to school to finish my education. I only had one more year of college to do.

LaBerge: What was the camaraderie like at both the hospital and the IPM?

Belton: There was a lot of it. Everybody was in this together.

LaBerge: Right.

Belton: On the other hand, the one thing about polio you have to understand is, it strikes everybody differently. It is completely random. When the virus makes its way down the spinal column, it hits here, it hits there; and it hits hard in some cases, it hits lightly in other cases. You have no idea how you're going to come out of it. It's completely unpredictable.

So every polio survivor has a different set of muscles--in sharp distinction to a paraplegic. You break your back when you're a paraplegic: if you break it at a certain point, everybody who breaks it at that point has more or less the same physical situation to deal with, because it's just mechanical. But with polio, it is completely arbitrary, and so every polio victim--I've met lots of them--every one is different. There's no two alike.

That was true at the rehab hospital too. There was always somebody better off than you, but there was always somebody worse off than you. And despite that, we all realized we're all in this together, and so everybody helped everybody else. If somebody got in trouble and couldn't reach the button to call for help, the other person would call. You know, you'd stick together. And you'd usually all complain about the food together and things like that, so there was that effect.

Anyway, I spent this whole spring as an in-patient. Then I got to the point where they thought I could be an out-patient.

Family Adjustments in Gramercy Park Apartment

LaBerge: So that was quite good?

Belton: Well, I was making progress, but only up to a point. Then I got to the point where I wasn't making any more progress, so they said, "Well, you don't need to be an in-patient. You've got to the point--." My parents said, "We think we can handle him at home."

They had set up the apartment so I could be living there, which means they had to take off some doors to get into the bathroom--they had to adapt the apartment to my needs. They had to put in a raised toilet seat, or have one available, figure out about a shower chair, figure out how to get in and out of the shower, and figure out how to get up the steps to the apartment. All this stuff they had to do for the first time. They had never done it before, but it's just like any major injury or illness to a child: the parents learn a lot too. You know, your child comes down with childhood diabetes and, by God, you start learning all you need to know about childhood diabetes. You didn't know it before, but you're going to find out. You're going to become an expert. So my parents learned about what there was to be done for my rehabilitation, or at least how to survive outside the hospital.

So I did that. I went home in the summer, and I was an out-patient. Every day my mother would push me--there were no accessible buses in those days. This is long before accessible transportation--the summer of 1955. My mother would push me 20 blocks, and there were no curb cuts, either--no curb ramps. Lift me up and down curbs. I was in a manual chair, but it was a standard manual, which weighs about 50 pounds. They didn't have the lightweights yet. Lightweights are half that weight. And I weighed a lot too. I put on weight through the inactivity. She's a petite woman, but she was determined, and so she took me up and down--she learned the techniques--up and down the sidewalks for 20 blocks in New York, to the IPM.

And I guess she stayed there all day, or maybe some days she went home on the bus and then came back and picked me up and pushed me all the way back. There was no other way to do it. There was no van service or accessible transportation--nothing. They didn't care how you got there. That was your problem.

LaBerge: What about--did other people have attendants? Was that something--

Belton: There weren't many of those around either because--

LaBerge: Right, I mean, you had to figure it out yourself.

Belton: Yes, you were on your own. It was usually family that did the work in those days.

Return to Harvard for Senior Year

Making an Apartment Accessible

Belton: It came September and it was time to go back to Harvard. They said, "Well, where are you going to live?" I couldn't live in the house any more--Dunster House. And I needed full-time help from my mother, so we found an apartment not too far from the school, the campus.

LaBerge: Where was it? I wonder what street.

Belton: Prescott Street, Number Two. It was an old brick building with a short flight of stairs at the entrance, inside. It housed graduate students and married students.

I had to figure out how to get up those steps. There were maybe four steps inside in the lobby to the ground floor apartment, so the Harvard maintenance people invented a very clever device. Again, there was nothing ready-made. This was in the dawn of prehistory when it came to access. They invented a device which was a ramp with a pulley and a crank mounted to the top of the stairs, and she would attach a rope to the front of the chair and crank the pulley and pull me up the ramp. We got in and we got out, and somehow we got through the year. The apartment was so old that the bathtub had claw feet on it, and I couldn't get into that, so I just had to have baths on the bed. Then everyday she'd push me over to class.

Mother as Sole Attendant

LaBerge: So your mother lived with you for the year.

Belton: Yes, that whole year.

LaBerge: Wow!

Belton: She lived with me for four years in all, because I had law school ahead of me. My father was in New York City and we were up in Cambridge, and he then began the process--as he did for the next four years--of coming up every weekend from New York to be with us.



Peter Belton being carried up classroom steps,
Harvard College, October 1955.



Peter & Marie-Madeleine Belton at Peter's Harvard
College graduation, June 1956.

It was okay in the nice weather. He'd fly. But in the bad weather, the planes were either late or cancelled, and sometimes he'd have to take the train, and it would take him eight hours or ten hours instead of a one-and-a-half hour flight. He did this every weekend for four years.

And he would bring supplies: good food from Little Italy--good bread, good cheese, other delicacies from New York.

My mother pushed me to class everyday, but all the classroom buildings were inaccessible. They all had flights of stairs on the outside. This is in Harvard Yard. These are buildings built 100 or 200 years ago, so we had to get up a flight of stairs to get in every building. And the flight would be something like eight or ten or 12 steps.

How did we do it? Well, she would just park me at the bottom of the stairs and wait until a couple of students came by on their way up the stairs, and then she would draft them into the operation and teach them instantly. I would help teach them how to do it because we never had two the same. It was always different students, so we had to teach them. In the course of the four years, we taught hundreds of students how to do it.

LaBerge: Was there anyone else at Harvard in a wheelchair in that time?

Belton: No.

LaBerge: You were the only one.

Belton: I was the only one anyone could ever remember having attempted to go through Harvard in a wheelchair. It's a very old university, and all the buildings in those days were very old. There was a very great problem of access, but I was determined to do it. I picked up my major in philosophy.

The philosophy building had the same steps. It was okay in nice weather, but in Cambridge you get a lot of bad weather, so if it was raining, you'd sit there at the bottom of the steps in the rain, waiting--or if it was snowing, because it also snowed a lot. If there was snow on the steps, it was quite exciting because you never knew if anybody was going to slip and dump you over. Actually, it never happened, and I got in and out as needed.

She would leave me in class, and she would come back for me at the end of the class and pick me up and take me to the next class or down the stairs and back home or whatever was necessary. If I had to go to the library, she'd take me there. We got through the year. And I graduated.

LaBerge: Would they have changed the classes so they'd be on the first floor for your sake?

Belton: No.

LaBerge: No, you'd just have to pick classes that were going to be on the first floor?

Belton: Yes, right. Luckily most of them were.

LaBerge: But no--

Belton: No. They were not that accommodating.

Graduating Cum Laude

LaBerge: Right. No accommodations--that's the word I wanted. [looking at a photograph] Oh, is this graduation day?

Belton: Yes.

LaBerge: Oh, this picture has to go in the volume.

Belton: Yes, I've got one of my mother pushing me, which is even better.

LaBerge: Oh, this is wonderful. So for sure, we have to have that. Is that robe crimson?

Belton: No, it's black. This is Harvard--very traditional. Crimson was the school color, but black was the robe color. So we went to graduation. Graduated with honors, by the way--cum laude.

LaBerge: And where was graduation?

Belton: In the Harvard Yard, as usual. [spoken in a Boston accent] [laughter] It's a big event--thousands of people. But it was a beautiful day. It always is. In June of '56--because I graduated a year after my entering class.

LaBerge: Just looking at the time, Peter, do you want to keep going, or do you want to--

Belton: No, I think not.

LaBerge: That's what I was thinking too.

Belton: But we're never going to get through this.

LaBerge: Yes, we will. I'm going to keep coming.

Belton: You'll run out of money.

LaBerge: No, I won't. I would just as soon come lots of times for shorter periods if that's better for you.

Belton: Yes, this I like.

Inaccessability of Classroom Buildings

[Interview 3: August 10, 1999] ##

LaBerge: Last time we ended with you and your mother going back to Cambridge and you finishing your last year of Harvard in the apartment. And we talked about the fact that there were no accommodations made for you. Since that time, I've read about a couple of the laws, and this wasn't a law, but after World War II, the Veteran's Administration, it seemed, pushed for guidelines for colleges to be accessible if they got federal money. But Harvard probably didn't get federal money.

Belton: Well, I think they all got federal money to some extent. Nobody's that proud or that rich, [laughter] even Harvard, which is the richest of all. But I think you're right, it was a push and it was a long process. I think it all happened after I left, because I remember reading in alumni bulletins that I got in later years--maybe quite a few years later--reports that Harvard had now made virtually all its buildings accessible to the disabled because of these new federal regulations which tied federal money to that kind of accommodation. But it certainly wasn't true when I was there. They may have been thinking about it, but there was no effort to do anything. I was there during the dark ages when nothing was accessible. You know, it's an old New England university--the oldest--and so it's old New England buildings and steps everywhere. But I did this--we're talking now about my last year in college.

LaBerge: Right.

Belton: I had to finish up my major in philosophy, and that required that I go to mostly one building where the philosophy department was located, and that had ten steps outside. I think I told you how we got up those steps.

LaBerge: Yes.

Belton: We just parked at the bottom and blocked the way until we got somebody to carry us up. But I was in a lightweight manual chair--well, a manual chair--and it was doable. It took two or three guys, but there were plenty of guys coming in and out all the time, so we did that for the whole year.

She [my mother] would push me here, there, and everywhere--wherever I had to go: the library or to a seminar in some building or to courses in that or other buildings. We got through the year.

Learning to Survive

LaBerge: And what about your friends? Were your classmates still there?

Belton: No, they had all gone on, of course. I missed a year, a whole year, so they had all graduated a year before me. And frankly, I didn't really have time to make new friends because I was doing my last year of college, which is difficult in any case. In particular, I was dealing for the first

time with being disabled in public and in a very difficult environment, so I really focused on what I had to do. It was just the two of us, really. I met a few kids in class, but nothing really developed. It was basically survival at that point, and getting through.

At the same time, I was applying to law school, which one does, of course, in one's last year--taking law school aptitude tests and all that. Also learning how to take exams again, which was a problem--a physical problem--because I couldn't write for any long period of time. My arms were not strong enough, so I had to talk to the university about it and figure out how we could do this. Let me see if I can remember. I think they just gave me extra time for the college exams.

LaBerge: But you still had to write them yourself?

Belton: Oh, yes. Yes, and I could if I just had extra time to rest. They were long, two or three hours kind of thing. Well, they varied, but this was long before the days of multiple choice.

LaBerge: Yes.

Belton: Everything was essays in college and law school in those days. We're talking 1956 at this point. The idea of multiple choice had not been invented, or at least, it hadn't reached Harvard, which is more likely. It didn't for a long time, either. Of course, there were no computers or anything like that, so it was all just laboriously, in my case, writing it out by hand. I did have weakness in the arms and the hands, so that I had to take my time about it. I'm sure that the handwriting got progressively worse as the exam wore on, but somehow they were able to read it.

I had written the right thing, apparently, because I passed all my courses, and, as I think I mentioned, I graduated cum laude--with honors.

LaBerge: Before you went back, after your year off, what kind of encouragement or discouragement did you get from the Harvard administration?

Belton: That's a good question. It's a big school and there wasn't a lot of personal contact. You're one of a large number. My class at Harvard--undergraduate--was probably 1,100. It's a big school.

I have a vague recollection. I may even have the letter somewhere that my father wrote to them during the summer, or maybe the spring before I came back, asking--at some point, some appropriate point, he wrote to them and asked if I could have a year's leave of absence because of this event. They wrote back and said, "Of course. Just let us know when you're ready to come again." But that was about it. It was very formal, you know. They didn't give me a hard time, and they didn't give me encouragement either.

LaBerge: Was there a requirement usually for people to live in the houses, as opposed to you having an apartment?

Belton: Yes.

LaBerge: So did you have to get a "dispensation"?

Belton: Yes. It was waived only, in those days, for married students and maybe people whose home was local. There were some local kids who lived around there. They were called "townies." In my case, it was obvious, but that was all right. They didn't give me any difficulty.

No Previous Experience with Disability

LaBerge: Susan O'Hara [former Director of Disabled Students Program, University of California at Berkeley] had a few questions that I ought to ask. One was, what was your experience of people with disabilities before? Did you have any?

Belton: None. I'd never met anybody with disabilities.

LaBerge: Okay, right, so it never--

Belton: There weren't any, as far as we knew. I mean, there were, but they were all hidden. Nobody was out in the streets. We were a hidden minority. You never saw anybody in the streets, or, even worse, in public places like theaters or shopping or movies or things like that.

LaBerge: Because they couldn't get there too, right?

Belton: There were a lot of problems. Transportation and access were the two main problems. Sure, there were a lot of polio people like myself, because polio was at its height in the early fifties. Late forties and early fifties was probably the apex of the polio epidemics, so people were being struck down right and left, and many of them were winding up in wheelchairs, but they didn't get out of their houses very much. Now maybe I was just a non-observant teenager. Maybe they were around and I just didn't see them. They were invisible.

It was a bit of both, I'm sure. Our consciousness had not been raised. At the same time, they were very reluctant to come out. It was difficult to come out of the closet--the wheelchair closet. [laughter]

LaBerge: I was asking you about your friends. What I was trying to get at was, did you feel you were treated differently afterwards by your friends? Did you have any of those kinds of experiences?

Belton: No. Well, as I say, in my fourth year in college, I really didn't have anybody who became a close friend. In law school, that's different. We'll get to that. But in college I was dealing with my first year of being a publicly disabled person. And in those days, that was difficult. You had to invent everything as you went along. There was no easy way.

Bathtubs, Sliding Boards, Taxicabs

LaBerge: Where did you get the courage and the inspiration to do that?

Belton: Well, it's one of my character traits that I'm a determined kind of person. I was determined to get on with my education--finish up college--I try to finish things I start--and get to law school. I did have, as it's clear to you by now, tremendous support from my two parents.

LaBerge: Oh, it's amazing.

Belton: They were what kept me going, yes, in those early years. There was never any doubt in their mind that I was going to do what we had all thought I was going to do all along. This was just a minor inconvenience that was going to be dealt with one way or the other. I think if I had been even more disabled, it would have still happened. You know, if I had been stuck in an iron lung, they would have brought in a tutor. We didn't have to deal with it, but come hell or high water, they were going to, with my cooperation, get me through.

But it was all so primitive. There was no way I could get in the bathtub in the apartment in Cambridge. The bathtub was on claw feet. It was one of these old iron things, and there was no equipment such as I have now--which we'll get to. So, for that entire year, the only way I could bathe was my mother would give me a bed bath once a week, or whenever it was--bathing me in bed, which means going back and forth, back and forth with basins of water, back and forth. If you've ever given anybody a bed bath, you know it's a long, slow process. And she was a petite woman, and I was a five-foot-nine, normal-sized male; so it was a big job.

To get me in and out of bed, she'd have to slide me across on the sliding board; same way, to get me on and off the toilet. All this we were making up as we were going along. We had a little bit of technology, but it was very low tech. I guess the only thing we had was what's called a sliding board, or transfer board, which is a board about eight inches by 30 inches, polished, and you slide across from the bed to the chair or the chair to the toilet or in and out of the car, but it takes practice and balance.

LaBerge: Did she get training by watching at the rehab center?

Belton: Yes. I think they actually showed her how to do it once or twice. But it's pretty obvious how you do it, you just have to get practice doing it. But I didn't get in cars very much because we didn't have a car at that point. You don't need a car in New York City. If we had to go anywhere, I'd go in a taxi, but I'd stay in the wheelchair because in those days, all the taxis were the big old Yellow cabs. In the big Yellow cabs, there was so much space between the back of the front seat and the front of the back seat that you could stay in the wheelchair--and the doors opened so wide. They were tremendous. The Yellow cabs--well, I say Yellow, Checker cabs, I guess they were because they had checkers on the door.

LaBerge: Checker cabs.

Belton: The car company that made the cabs was Checker, and then Yellow happened to buy them. Other companies bought them too, but they were Checker cabs--a company which only made taxi cabs for many years. They're out of business now, of course, but for decades that was the cab company.

If you got the cab alongside the curb, closely, you could tilt the chair and get it up onto the floor of the back seat if you knew what you were doing. It was sort of like getting up on a curb. Then I was loose inside the cab; you lock the brakes and hold on and pray. The cab drivers were usually pretty careful when they knew they had you on board, but we didn't do very much of that. Occasionally in New York, like to go to the airport and things like that, and/or occasionally even to the theater; and in Boston, likewise. But public transportation was not accessible. Nothing in New York was accessible in the way of buses and subways. That was true of Boston too--the MTA [Metropolitan Transit Authority], which is the big Boston rapid transit line. You either walked or you took a taxi if you could find one, and hoped it was a big, accessible Checker. As I say, most of them were. Now, none of them are, but that's another story.

You see that yellow cab over there parked at the corner? That's an accessible minivan taxi. [looking out the window over the plaza]

LaBerge: Oh, it is? Oh, okay.

Belton: There are now several dozen in San Francisco. They have a rear or a side entrance and a little ramp. But that's a very new development--in the last couple of years only. I carry their phone number in my pocket, and I've used them once or twice in emergencies. But most taxis are not accessible today.

LaBerge: Well, in the summer of 1956, in between graduating from undergrad and entering law school, did you go back to New York, or did you stay in Cambridge?

Belton: [pause] I'm pretty sure I went back to New York. I must have continued with rehab. That's funny, that's a slight blank.

LaBerge: Well, we can fill it in later.

Belton: Yes, it might come to me. The previous summer, before I went back to school, I know I was doing the rehab as an out-patient. I might have continued. I can't remember right now.

Activities of Daily Living [ADL]

LaBerge: When you got to Cambridge, did you have a place there to go to rehab, or not?

Belton: Oh, no.

LaBerge: So you just--your rehab was your living.

Belton: You got that right! It's called ADL--Activities of Daily Living. And in rehab institutions, ADL is part of the program. ADL is where you learn how to do just what I said: transferring from bed to chair, and getting dressed and undressed, using the toilet and shower, and all that. But that's their structured ADL. Then when you're on your own, it's all self-directed ADL--just to

get through the day, and to get through the night, and to get through the morning. All that you learn yourself. You begin the lifelong process of learning to create solutions, dealing with problems that they don't foresee, and coming up with your own solutions.

I've been doing that now for all these years--whatever it is--45 years--and luckily I'm very mechanically-minded, because if you're going to be profoundly disabled, you've got to be mechanically-minded to deal with all the mechanical problems you have to face. Now I know several people who are disabled and are mechanically pretty inept, and it complicates their life tremendously. Of course, you can't pick and choose. You either are or aren't mechanically-minded. And I guess I was. Maybe it's a guy thing--I don't know--but I've always liked to make things with my hands and solve solutions with practical problems. I mean, solve problems with practical solutions. [laughter] And so that's when I began this process of inventing things, which I've been doing ever since.

LaBerge: As we go along, will you mention when you have invented something?

Belton: Sure.

LaBerge: Okay. Well, let's just talk about your classes at Harvard. And this is undergrad: are there any memorable professors, classes, anyone who made a major influence?

Belton: I knew you were going to ask that.

LaBerge: Yes. Maybe there weren't.

Belton: No, I've been thinking about it. I just had this one year to wrap it up, and in a way, it was a trial for what was ahead. It was like a test for what really mattered, which was law school, so I just did what I was going to do and got through the year. It's not particularly memorable in any way except for dealing with all the problems that we had to deal with on our own.

The university people were willing if you asked them. As I told you last time, they did send some people from buildings and grounds to build a portable ramp to get me in this apartment. I think the university probably owned the building. Anyway, I'll show you a photograph of that sometime. But other than that, we were on our own. It was a benign neglect, basically. They figured if you can do it, we'll be glad to educate you.

We should get to law school.

Desire to Study Law

LaBerge: To law school. Well, tell me where this desire to become a lawyer came from.

Belton: I wish I had a dramatic story of some epiphany.

LaBerge: That's all right.

Belton: But there was no epiphany. I guess I always thought of doing it.

LaBerge: What did you intend to do with it?

Belton: Well, that also you never really know, because the field of the law is so much broader than you have any idea when you don't know much about it. All you know if you're a lay person is what you see in the movies or read in the books and stories. It's Perry Mason and a few famous trials, things of that nature. I guess you all assume you're going to be a trial lawyer because that's about the only kind of lawyer you know. You have a vague idea that there's some government lawyers and things like that, but mostly people think, "Oh, I'm going to be a great trial lawyer." And I think I probably could have made a pretty good trial lawyer.

LaBerge: Oh, I think so too.

Belton: And maybe that was what I thought I was. I didn't really know. I was just interested in the whole field. I was going to go to law school and learn about it and see what aspect of it was interesting or presented itself by opportunity. I think that's what most people do, really.

Nowadays, people tend to think--I know, for instance, my daughter's roommate is going to law school starting this September, and she says, "Oh, I want to be an environmental lawyer." A lot of people say that. It's the popular field. But you really don't know until you get (a) into law school, (b) through law school, and (c) out there looking for jobs. What's available? You might find another field of the law that you had no knowledge of that you find much more interesting; so you really shouldn't commit yourself in advance.

It's okay; there's nothing wrong with having a dream and having an idea of what you want to do, but you shouldn't steer your ship by that star too firmly because you might well change your mind several times in the course of law school, to say nothing of when you come out afterwards and discover there are no jobs in that field but there are good jobs in another field that sounds interesting, and you might give that a shot.

Of course, lawyers change careers too. I haven't, but there are a lot of lawyers who start as one kind of lawyer and then become another as they go along, either through choice or the firm changes or they change firms or whatever. There are a lot of ways it happens.

All I knew was I just wanted to be some kind of lawyer, and I wanted to see how it was, give it a try. So I applied in the fall of my senior year, and I took the exams in the spring. That was a little harder because they didn't give me any extra time for those. They were administered from the testing service--the law school aptitude test--LSAT. LSATs--right. But mercifully, they are, to some extent, multiple choice. That's where multiple choice began to make inroads. It certainly hadn't at college. So that wasn't so much of a strain on my writing.

LaBerge: Did you apply other places than Harvard?

Belton: Yes, but I really can't remember which ones. It probably would have been the same sort of things I applied to for college. Well, I applied to Princeton for college and Princeton doesn't

have a law school. But Yale, and maybe Columbia. I think Columbia was the third. Yes, that would have made sense because I lived in New York.

Harvard Law School Scene

LaBerge: I'm assuming that you got into all three, but Harvard was your first choice.

Belton: Either that or Harvard came out first with the offer, but it certainly was my first choice. I didn't wait. I mean, I love Cambridge. I wanted to stay there. I knew the place. I'd begun to understand how to deal with Cambridge in a wheelchair, and I didn't want to have to start conquering an entirely new piece of landscape. Cambridge was hard enough. For all I knew, Yale was worse.

LaBerge: What are your first memories of law school? Did you have some professor like John Houseman, the fellow in *The Paper Chase*? [laughter]

Belton: No, but I have a story to tell you.

LaBerge: Good.

Belton: You get to Harvard Law School, and it's a big law school. It was then the biggest in the country and is still the second or third biggest. Maybe it's still the first; it's a very big law school. My class had 525 students, of which, by the way, only about 20 were women. Now, it's half and half, if not more women than men; but in those days, women were something of a rarity--which by the way brings me to my wife, but we'll get to her in a minute.

I started law school, and at Harvard--at least then--you don't have any choice, the first year, of what courses you take. Everything is mandatory. So I started going to the classes, and of course, I had to deal with a whole new set of buildings. The law school campus is adjacent to the college but a few blocks away to the north. It's the same vintage buildings, all different ages. There's two main buildings. One, Austin Hall, is quite old; the other, Langdell Hall, was somewhat newer. One was built in the 19th century, and the other was built in the twenties, probably. They both had flights of stairs, however. We dealt with it the same way. I just got to meet new faces, carrying me up the stairs. [laughter]

LaBerge: Right. Well, this time did you have classes on the second floor and things like that, too?

Belton: No, luckily there weren't any. All the classrooms happened to be on the ground floor, so I didn't have to deal with that. The library was upstairs, but there was a freight elevator I used, so I could get to the library.

We had to find a new apartment because it was too far from the old apartment. We found a new apartment, which was across the street from the law school. We set up housekeeping and continued more or less exactly the same way because we'd done it for a year because we knew how to do it and it was working.

Summons from Dean Erwin N. Griswold

Belton: Then long about--oh, I hadn't been there more than two or three weeks--I received a short note from the dean or the dean's office asking me to come in. The dean wanted to talk to me. I had no idea what this was about. I'd never met the fellow. You don't, ordinarily. My mother and I made the appointment and we just showed up. We went in his office. We were ushered in, and he sat us down and he proceeded to tell us, basically, that he was sorry that I was there because he didn't think there would be a career in the law for somebody "in my condition." He made no bones about it. He was--we'll talk about him in a moment. He was not a man of tact in any sense.

LaBerge: What was his name?

Belton: We'll get to him.

LaBerge: Okay. [laughter]

Belton: "His Nibs" is what his secretaries called him. Basically, he said, "You really don't have much of an opportunity, being confined to a wheelchair. About the best we can probably do, perhaps, if we're lucky, is find you a job at a legal publishing house. There are two or three big legal publishing houses, and there you could get a job in the back office, as an editor."

These are houses that publish all kinds of edited case reports and surveys of the law. It's an editorial and publishing kind of job--you know, in the back office, out of sight, so I wouldn't offend anybody.

Well, you can imagine we were absolutely flabbergasted. This was a real blow, for the dean of the school you finally got to, to say, "I'm sorry you're here. Basically, you don't belong here."

His name was Erwin, middle initial N--Nathaniel, I think --Griswold. A famous man. He, at one point, was President John Kennedy's solicitor-general. But he was in the government before then. His field was taxation. He was a tax expert, so he was involved in the Treasury Department--public service. He'd been at Harvard for many years. He had been the dean for many years by the time I got there. Big, gruff, burly fellow--man of few words. As you gather already, not very long on tact.

Mrs. Griswold's Disability

Belton: I didn't know it at the time, but there's another twist to the story which was very ironic. His wife of many years--they were probably in their late fifties by then--his wife of many years was also a polio victim and had been since the thirties. We're now talking the mid-fifties; so for 20 years he had lived with a woman who was a polio survivor and who, although not using a wheelchair, got around with great difficulty using full, long leg braces and crutches--hobbling

along, having to deal with steps. With braces--long-leg braces--and crutches, steps are just as much of a problem as if you were in a wheelchair, having to deal with all the problems of that university.

They had made, as far as I could see, no accommodations for the dean's own wife except one, which I'll come to. And everything else, you would have thought he would have realized that you somehow can find a way. She was a very--maybe it's true of most polio survivors--she was a very determined woman. She said--no nonsense--"Let's do it!" She was a get-up-and-go type, and she led a very active life. They had children, which she raised. And she was active in many university affairs, and probably outside. I think she had other kinds of interests in the community. So, you would have thought with that experience--you can't have a more intimate experience than that--that he would have been a little more understanding. But that just made it even more traumatic and emphasized his character--to me anyway. When I found out about that--I think it was one of the secretaries in his office who said, "Do you know about Mrs. Griswold?" I said, "No, I don't know about Mrs. Griswold." Didn't see much of her. She said, "Oh, well, she's disabled too." Eventually, I saw her and pictures of her, and I realized what she had been dealing with all her life. She'd had it as a young woman in the thirties, if I remember correctly.

We went back to my apartment--my mother and I. We sat there and looked at each other.

LaBerge: So you weren't being tossed out, you were just politely being--

Belton: No, he couldn't do that. He just wanted me to know I shouldn't get my hopes up, that my opportunities were very limited, and I'd probably do no more than what he described.

This was a real blow, to start out with that attitude. We just looked at each other, and I guess we talked to my father on the phone and brooded about it for a while. My mother obviously was in tears because nobody had ever said anything like that to me, or should have. But eventually we said, "Well, he might be wrong. Let's just do it and do the best you can and see what develops. Who knows? There might be more opportunities than he realized. Let's do the best you can and we'll take it day by day, year by year, and we'll see how it all turns out. Nuts to him."

LaBerge: Oh!

Belton: Years later he was out here in San Francisco, and I really wanted to figure out some way to show up and go [blows a "raspberry" noise] [laughter]--I don't know how to spell that, by the way--and tell him that I was now the senior staff attorney to Justice Stanley Mosk of the California Supreme Court and doing what I thought was useful work. "So there!"

But I decided (a) he wouldn't remember me and (b) it wasn't cool, so I refrained from the opportunity to say, I told you so.

LaBerge: Now was he the dean your whole time at Harvard?

Belton: Yes.

LaBerge: So did you see him again after this?

Belton: No, not face to face, but around campus. He knew who I was from then on.

LaBerge: Right, he probably looked for you.

Belton: Well, I was visible. I was the only person there in a wheelchair. I stood out. But I didn't go to my graduation. I got married, instead.

The Socratic Method

LaBerge: After this encounter, you just continued to go to class and write your exams?

Belton: Yes.

LaBerge: Now tell me, at that point did you have exams mid-year, or did you just have one exam at the end of the year?

Belton: In the first year, they're all full-year courses, and they're only at the end of the year.

LaBerge: Okay. So how did you assess how you were doing?

Belton: You really don't know. It's scary because it's so different from anything you've done before. Law school and college have very little in common. Everything is different: the way it's taught, the subjects, just the whole--

LaBerge: Well, can you talk about that a little bit?

Belton: At Harvard, and now of course in law schools everywhere, the primary method of teaching is the so-called Socratic method, which you've seen in the movie *The Paper Chase*, which actually was a pretty fair rendition of what first year at Harvard was like. But the student in that movie had a romance with his own professor's daughter.

LaBerge: Yes.

Belton: That does not happen.

LaBerge: That doesn't always happen, no. [laughter]

Belton: No, it doesn't happen at all. [laughter] But the classroom scenes were pretty accurate.

LaBerge: And did you feel the fear of being called on?

Belton: Oh, yes. Oh, yes. Oh, yes. And it's stimulating. It's an interesting way to teach. I'm afraid it's probably going by the boards. I get the sense that law schools today are losing that technique because it takes a very skillful professor. You've got to know how to do it to do it right to make

it work and not just be a free-for-all. And they're more the old school types that used to do that. I mean, the guys like the one in the movie--the old-timers.

It was invented at Harvard, as I understand it, back in the twenties, and maybe earlier, and raised to a fine art at Harvard and then adopted by a lot of other schools because it seemed to work. It taught you skills that you couldn't get out of the book. It taught you how to think on your feet and how to deal with--they pose you hypotheticals, and then they change the hypothetical in some small way, and you have to figure out right there in front of everybody what effect this has on the outcome. All that teaches you to think quickly and logically. So it's very valuable, especially for trial lawyers, but I think also for any kind of intellectual rigor and training.

But it's hard on the professors. It's a lot easier just to stand up there and lecture and say, "Read the book," so I suspect that it's drifting out of use more and more. And it may be that some of the fields of law today are so technical that it doesn't lend itself to that. I'm not an expert on law schools today, and I don't purport to be, but there may be good reasons and bad reasons for this.

But while we were there, that was all there was. There was no multiple choice, as I say. And all the courses were taught this way. It was an exhilarating experience. There's no question about it. Never had anything like that in college. College professors stand up there and lecture, and you take notes. And then you read the book. That's the main difference between the two.

There's also a feeling of competition between you and your fellow students. To some extent there is competition because class standing is important and getting on the law review and all that. It's a friendly competition, but there are moments of desperation too. And that, also, I think is shown in the movie or the television series, *The Paper Chase*.

Those are the main differences, but it's a whole new world. There's no doubt about it.

Cambridge Weather and Disabilities

Belton: I did the best I could. Again, I was still dealing with a disability, so I still had less strength and time than others did to do all the background reading. I just didn't have available the number of hours they had, and I also really didn't dare undertake any kind of extracurricular activities, so I didn't "go out," as they say, for a law review--any of the law reviews. That's all extracurricular, and that requires an incredible commitment of time. The guys who are on law review--either the main one, or the secondary law reviews--there are several at the school--have to put in dozens of hours every week just doing that, on top of their studies. I had no way to find those hours. I could barely get through the day as it was, so I just did my studies.

LaBerge: Did you have a study group?

Belton: No, I couldn't participate in one of those either. Same thing, you know: they would meet at strange times in strange places, and they'd pull all-nighters and things like that. I couldn't do any of that.

I had to get to bed. I needed the rest to get through the day. I just came home. My mother took me and picked me up. She'd bring me to class and leave me there and go off and do her shopping or whatever, and then she'd meet me and help me get to the next class. I tried to schedule it so I'd have two consecutive classes in the same building so we didn't have to go in and out of buildings more than necessary.

Cambridge winters are terrible, and there were some very bad times when the snow came. There were maybe six days a year when I would wake up and I would know without opening my eyes that I'm not going to school that day. The reason is, it's totally silent. There's an eerie silence. You think you've gone deaf, it's so quiet. You hear no traffic, no pedestrians passing, nothing. And then you look out the window and there's a foot of snow out there that's fallen all night long, so nothing moves.

Cambridge was very poor at snow-clearing. They didn't have a lot of money. It's not a rich town other than the university, and the university doesn't support the town as well as the town thinks it should be. Their theory was the Lord brought the snow, the Lord will take it away, in the fullness of time. The result was there was very little snow clearing, even though our apartment was on the main street--Massachusetts Avenue. So, on those days, it was hopeless. I would just miss classes on those days.

But the second or third day after the snowfall, I'd have to get to class, so we would bundle up and start out. My mother hated the snow and the cold. She was a Mediterranean; she loved the sun. She was a sun worshipper. We hated to go out into the stuff, but we had to get there. But the problem was that it became extraordinarily difficult to get the wheelchair to the school because of the snowbanks. What would happen is, by then the cars would have piled up snow along the side of the road, and even if you could get along the sidewalk, when you came to cross the street, there was this little mountain to climb over of dirty, hard, irregular snow--by then mostly ice--to get onto the street and then to cross it and face the same thing on the other side. That was always a challenge.

Then when you get to school, you'd find the flight of stairs that I had to go up looked like a ski run because the snow had filled in all the steps. You still had to do the same thing, but what you didn't know was, Was there ice underneath the snow? You didn't know that until you started up the steps. It was exciting. They never dropped me, but there were a couple of moments when somebody would slip and somebody else would grab and you'd say, "Whoops," you know, "hang on." And I didn't have a seat belt in those days. I didn't know enough to have one. Well, they didn't have belts. So it was exciting. Eventually, the snow would go away, and the springs were nice and we got through the years.

Professors

LaBerge: What professors do you remember?

Belton: Gosh. In the first year in Harvard, you have some of the grand old men--at least in those days --who went on to become legends. They had all written case books and treatises, for instance. Well, actually it could be any year. I should have looked up my report card to see if they had the names on it.

I had Austin W. Scott for trusts, and he, of course, was the great American expert: the author of *Scott on Trusts* and the reporter of the *Restatement of Trusts*. He's one of the leading --probably the leading--American expert on trusts.

Yes, the names could come to me, but they're names now which are all quite distant--early, early leaders of the field. And many of them, as I say, had authored case books. If I think of any names--

LaBerge: Okay. Was there anyone who you had a personal relationship with?

Belton: No.

LaBerge: Or had a big impact on you?

Belton: No. In most cases that doesn't happen. In the first year, as the movie shows you, you're one of a large group. You're in sections of about 125 students, and you're just a name on a seating chart.

LaBerge: But I bet they remembered you, don't you think?

Belton: I suppose. Yes, I suppose. I used to have to sit at the back because you come in from the hallway at the back, and then it's an amphitheater that goes down, that slopes.

LaBerge: Angle, yes.

Belton: Rather than go down the stairs, I just sat right in the back row. And they're big rooms. I was some distance off.

An Elevator in Austin Hall

Belton: Now, I mentioned that there was one thing they'd done for Mrs. Griswold. In one of these buildings called Austin Hall, which is a very old building, upstairs was the famous courtroom for the moot court, which I think Harvard invented also and had a long, great tradition of. It had a big, beautiful courtroom upstairs. The Harvard [Ames] Moot Court Competition was the preeminent one--the judges would be U.S. Supreme Court Justices and people like that--so it was worth going to.

In order to get her up there--and they also used it for other ceremonial purposes--they had taken a closet and converted it into this tiny, tiny elevator. It didn't have to be very big for Mrs. Griswold because she was always standing up in her braces. But it was the only way to get up the stairs because it was a long flight--high ceilings below.

I was determined to get up there, just to get to the courtroom and to see what was up there and be part of that aspect of the school. We managed to cram me into that elevator by taking the foot rests off the chair--basically taking a deep breath and just cramming me in with a shoehorn. Nobody could get in there with me, it was so tiny. But it worked; it got me up to the top.

And I haven't been in one like it until I recently went on board the U.S.S. *Potomac* [laughter] over in Oakland--FDR's [President Franklin Delano Roosevelt] yacht--which I can talk about too.

Summer Job: Program in International Taxation

Belton: Anyway, we got through the three years. Now, the first summer--that would have been, what, '57? I took a job at Cambridge at the law school in the summer working in--there was a program called the Program in International Taxation. It was one of Harvard's many programs in the field of international law, which I was interested in, given my French schooling and background. I took quite a few courses in international law. I was almost toying with the idea of going into it. I didn't know quite what it entailed. Anyway, they had a program called International Program in Taxation, where they published a series of volumes on the tax laws of other countries. There'd be one on France, one on Poland, one on Brazil--whatever countries that were important to the world trade field. And so I took that and did that for the summer, just to keep in Cambridge. I didn't want to have to go back and forth, and it was interesting and I learned a few things.

LaBerge: And so your mother stayed with you?

Belton: Oh, yes. That just continued as usual.

LaBerge: Now, did you have any problem getting that job? Did anyone discourage you?

Belton: No. No, they didn't give me any problems. It was a smaller building on the campus. I'm sure we had some steps. I don't remember.

LaBerge: Did it involve writing?

Belton: Yes. It was research and writing. It was in this narrow field, but it was interesting. And I got to meet a fellow--Professor Katz.

LaBerge: Wilbur Katz?

Belton: No, no. I'm trying to remember his first name. It'll come to me. It was Milton. He was one of the leading international law professors at Harvard. He's one of the few people I got to know because I took a number of small courses with him in the last couple of years--seminars--all on various aspects of international law. I went to his house for a cocktail party on one occasion. He was a very nice man.

LaBerge: Well, how did you do after the first year exams? How many people were left in your class?

Belton: Oh, it doesn't work that way at Harvard. Some schools it works that way--you know the old saying when you first join: "Look to the left, look to the right, one of you will not--"

LaBerge: Right.

Belton: At Harvard, it's so hard to get in and they have so many applicants, they just pick and choose, and they pick the best.

LaBerge: And no one's going to flunk out.

Belton: Very few people. If you've gone to that effort, you make it. I'm sure there are some, but at least in my days, the class moved through pretty intact.

LaBerge: Now, how about friendships during law school? You said that was different.

Belton: Yes, well, I got to know a few fellow students, partly because they lived in my apartment building. We'd go in and out together, and see each other going in and out. There weren't a lot. Again, I didn't participate in extracurricular activities because I didn't have the time and energy, or study programs as we mentioned. So it was more, again, just the Belton team doing its thing.

Professor Paul Freund's Class in Constitutional Law

LaBerge: How about the class you took where you realized that only a U.S. citizen could practice law?

Belton: Well, you know about that from my speech, I guess.¹

LaBerge: Right, but the researchers who read this don't know that. [laughter]

Belton: Well, one of the required courses in second year at Harvard was constitutional law. It probably still is. I hope it is. Anyway, it was a required course. My teacher was Professor Paul Freund, who was a famous American constitutional law scholar. And we had hardly started; it was late October--somewhere like that--and it was a lovely Indian summer, fall day in Cambridge. The leaves were turning golden. It's a beautiful time of year there. It was warm, and it was an

1. Mr. Belton was given the Outstanding Public Lawyer of the Year Award by the Public Law Section of the California State Bar Association in 1998. See Appendix for a copy of his acceptance speech.

afternoon class, and we were all sort of dozing in the classroom. He was droning on, and I was drifting and thinking I'd rather be outdoors and so forth.

Then all of sudden, he said something that made me sit bolt upright and brought me back to reality. We were talking about citizenship as a status in American law. He happened to mention--I don't remember his exact words any more, but he said there were a lot of professions and occupations which were limited to citizens in America, and this had been upheld in the courts. He said, "Why, for example, all of you here, you all have to be citizens to practice law in every state of the Union I know of."

I wasn't a citizen. Nobody had told me that. This was the first time I had heard about that. It never occurred to me. I felt so American. I'd been here since 1945 at that point--since I was 12--and I looked like a Yank, talked like a Yank, thought like a Yank, I must be a Yank. But as soon as that class got over, I dashed up to the library.

My mother said, "Where are we going?" I said, "We're going to the library!" [laughter] I pulled out a book that has a summary of the requirements for practicing law in all states of the Union. It's like a survey, a handbook. I started flipping through them wildly. I didn't know where I was going to practice law, but I started flipping through all the major states, and every one of them had it listed, among other things: "You have to be a graduate from law school, be 18--or whatever it is--be of good character, and be a citizen." Whoa! That was quite a wake-up call.

Becoming an American Citizen

Belton: The only thing I could do at that point was to become a citizen post-haste, so I inquired and found out how to do that. I had been in the country, of course, far more than the five-year minimum requirement for citizenship residence, and luckily, you're allowed to count it retroactively. Thank goodness. So I got the necessary application from INS [Immigration and Naturalization Service] and filed the application, and the process moved quite swiftly. I applied in the fall of '57. And it wasn't more than six weeks.

They do a background check, run it through, and they discover you don't have any outstanding felony crimes, indictments, and so forth. I did have to go for the interview. That was sort of fun. It was down in the Boston Federal Building. It was one of the rare times we had to go into Boston. Somehow we got there. I presume by taxi.

I was ushered into the presence of the examiner. It was on the top floor of the Boston Federal Building.

LaBerge: They had an elevator?

Belton: Oh, yes. The examiner was this dear old lady who was a DAR [Daughters of the American Revolution] type, and she had a set bunch of questions to ask me. One was, "Do you speak, do

you read and write, in the English language?" I said, "Yes, ma'am. I'm in the second year at Harvard Law School." [laughter]

Then she had some basic civics questions to ask me, and one of them was [spoken in an old lady voice:] "What is the Constitution?"

Well, two answers came to mind, and she didn't want to hear either of them, so I decided not to say them. The first answer would have been--from where I was sitting looking out the window behind her, I could see the mast and rigging of the frigate U.S.S. *Constitution* [laughter]--the great old frigate from the Revolutionary War, which still is anchored in the Boston harbor. So I was tempted to say, "That boat," but that wouldn't have been very successful with her! I was then tempted to say what I had learned at Harvard, that is to say, "The Constitution is what the Supreme Court says it is." [laughter]

That was crystal clear to me by then. You don't have to study long to discover it. But she didn't want to hear that either, so I told her what she wanted to hear: "The fundamental document that prescribes and limits the powers of the federal government." Oh, she was happy with that.

But it was a short interview because obviously she wasn't dealing with the typical run-of-the-mill immigrant. Actually, at that time, the typical run-of-the-mill persons there were Hungarian freedom fighters, because we'd recently had the 1956 Hungarian uprising. They had been given special dispensation to become citizens in short order if they were that kind of person, as a gesture of support. I forget the exact terms, but there was some connection like that. Those were the people she was dealing with mostly, who didn't necessarily speak or write English very well.

Shortly thereafter, we were summoned to the Federal District Court to be sworn in. Of course, my mother came along, and she was not a citizen. She never became one. But she pushed me into the courtroom and stood behind me, and everybody had to stand up and raise their right hand. I couldn't stand up, I could hardly raise my right hand, so she did it for me. So basically, she took the oath. And afterwards she said, "I guess I'm a citizen." I said, "No, you're not." [laughter] She wanted to become one too, at least under those circumstances.

LaBerge: Well, was that, interiorly, a hard decision to make? Because you hadn't thought you were going to do that.

Belton: No. On the other hand, I wasn't fresh off the boat either. There's a classic story of an English lady who applied for American citizenship, and when the time came that they were to swear allegiance--at that time the oath said something like, "Do you forswear all allegiance to all other powers?"--she said, [spoken in a different old lady voice] "Does that include the queen?" [laughter] They said yes, and she said, "Oh, my goodness, no, I can't do that. I'm awfully sorry." And she left.

LaBerge: That wasn't a problem for you?

Belton: No, I liked the queen, I still do, but obviously I had a job to do, and the job was to qualify for admission to the bar. And by that time, I was so Anglo-American anyway, and it all seemed to me one country, one system, one language. But no, I got my certificate. I could have showed you that too. It's in the safe deposit box.

LaBerge: And did your sister ever become a citizen?

Belton: Yes, she did at some other time and place. I don't remember when it happened. My parents never did. What most Americans don't realize is that, other than not voting, there is today very little difference between citizens and non-citizens. If you're a resident alien, you have all the privileges of citizenship except voting, and you certainly have all the responsibilities of citizenship. You have to pay the taxes, and in America, when there was a draft, you had to serve in the armed forces--you were draftable. Many other countries do not draft aliens, but we were, at that point, so devoid of volunteers, I suppose, that resident aliens were always draftable. I was 1A in the draft, you know, until polio.

So there's really not much difference between resident alien and citizen, except, at that time, there were these occupation restrictions and that was what I had to deal with. But we can't jump ahead to how I dealt with that.

LaBerge: No. No, we'll do that when we get to that year.

Belton: Yes, you just want to set the scene. [laughter] Well, you've got me now. You've got me in law school, you've got me through law school, and--

LaBerge: Well, have we finished law school?

Belton: Except there's a great story at the time of graduation.

LaBerge: Okay. What you told me is you did not go to graduation; you got married instead. So that didn't happen overnight.

Belton: No, so the question is do you want to talk about--

LaBerge: Do you want to talk about that now?

Belton: Oh, I don't mean that. I mean, do you want to take it slightly out of order?

LaBerge: Sure.

Belton: Why don't we finish one story?

LaBerge: Okay.

Belton: Okay, well, putting aside the fact of when and where I met my wife--which was during law school--we'll come back to that.

Mrs. Belton's Award from Harvard Law Students

Belton: But the one story I want to tell you was, when time approached for graduation, I told the people that I knew--my friends--I was going to go and get married instead. I'd been to one Harvard graduation, and they're all the same, basically. They're all held in the same place at the same time.

LaBerge: And you didn't feel the need to get the hood?

Belton: No, no, I just wanted to get out of there, start working. And well, I wanted to get married.

But I had had the experience, which one shouldn't miss. Harvard graduation is a great occasion, and I'd had that, but of course many people had not.

So, how did I learn about this surprise? One of the class officers took me aside and said, "Peter, unless you object, the class would like to do something to recognize your mother's contribution to your education, because we have all witnessed with our own eyes, for three years, in sunshine and rain and snow, her devotion to you and to your education, and we are all in great admiration of it. We want to express our admiration."

I said, "That's a great idea! I wouldn't have thought of it. It's a great idea! What do you want to do?"

He said, "Well, did she go to college or professional school?"

I said, "No, she never went to college or professional school because the war [First World War] intervened. She just did her high school in England."

He said, "Okay, then I think I know exactly what we're going to do."

They wouldn't tell me any more about it, but when the time came, just before graduation, there was a class party. It wasn't part of the graduation, it was just a class gathering to say good-bye. And they asked to make sure that I was going to be there, which meant that my mother would be too.

LaBerge: Right. [laughter]

Belton: It was in a hall, and we were at the back, as usual, and there were speeches and things like that. Then they said, "We have a special award to present." They asked my mother to come up, and they presented her--and I'll show it to you if you like--with a diploma bigger and more beautiful than the one that I thereafter got. All in Latin, like all of our diplomas were in those days. All in beautiful calligraphy. It looked exactly like a Harvard diploma, which is in very elaborately calligraphied script and all in Latin--beautifully done on parchment, the whole thing. Big thing. It was probably--oh, it must have been 16 or 18 by, maybe, 12--bigger than the Harvard diploma. And it awarded her with all--of course you had to read the Latin.

Instead of saying the Dean and Board of Overseers of Harvard College or Harvard Law School, it said, "The class and its representatives here assembled"--all this in florid Latin--awarded her the degree of "Mater in Legibus," which translates, of course, as "Mother in Laws." Mater in Legibus: mother in laws, with an "s." And it bestowed upon her all the honors and privileges pertinent to that degree, which they had just invented for her.

She knew, of course, that it was not a real degree, but she was so pleased that they had gone to that trouble. They got it all done on time. It was framed and everything--just beautiful. It was the only degree she ever had. She was very proud of that and she was very pleased. And I was too. I thought it was really a human touch. It demonstrated to me that, although I didn't know a lot of these guys, they all knew me by then because I had been under their feet for three years. They had been dragging me up and down stairs for three years, and they had witnessed and understood what was going on, so that was very nice.

She hung it on the wall wherever she lived. For her whole life, she would have it up and explain to people at length what it was and how she got it. It really made her life. It was a touching gesture from a school which is otherwise a big soulless university. It was a crowning, fitting end to the story that began in the same law school with Erwin Griswold telling me I shouldn't be there. You see? And three years later my class said, "Oh, yes, you should." They didn't know what he told us--I didn't tell anybody--but it was a nice way to end it.

LaBerge: Well, did she get to know people too? I mean, they must have gotten to know her a little bit.

Belton: Oh, sure. Some of them became regulars. She would train people to take me up and down the stairs. And by definition, there would be the same people usually going to the same class, so she would look out for them because then she didn't have to train a new person. But if they weren't there or they were late or it was raining, we grabbed anybody.

LaBerge: Do you want to end it there?

Belton: Well, it seems like a natural breaking point.

IV COURTSHIP, MARRIAGE AND MOVE TO CALIFORNIA, 1957-1959

[Interview 4: August 26, 1999] ##

Meeting Nancy Stevens

LaBerge: Last time we ended with your mother getting a diploma from your classmates at Harvard Law School.

Belton: Honorary diploma.

LaBerge: Honorary diploma. And you not going to graduation because you got married.

Belton: Right.

LaBerge: So if you could talk a little bit about where you met your wife?

Belton: All right. I lived--I think as I told you--at the time for the three years I was in law school, in an apartment house a few blocks from the law school. It was a general apartment house with all kinds of people living there. It wasn't a student dorm.

But it turned out that the apartment directly above mine was inhabited by three women, one of whom was--I didn't know it at first--a classmate of mine, a woman. And the other two--they had all been friends for years, and they were rooming together, but the other two were not law students; they had other jobs.

At that time, I should say, a very small proportion of the students were women at Harvard Law School. That was true of every law school of that time. We're talking now the late fifties. My class total was about 525, of which only about 20 or 25 in those days were women, so that's a very small percentage. Today it's, I think, over half, and that's quite a difference. But as a result, since there were so few of them, they stood out.

The reason I met this woman classmate, who was in the apartment above me, was because we met going in and out of the apartment on the way to school and coming back from school. She introduced herself and she was a very pleasant young woman. She said, "Would you like

to come up and meet my roommates?" I said sure. This was in October of my second year of law school, in 1957.

LaBerge: And what was her name?

Belton: Her name was Janet Senderowitz.

So I came upstairs the following weekend, or whenever, and was introduced to her two roommates. One of them was a woman named Lillian Akel. She was working with WBGH, the public television station in Boston. I think she was a producer--I'm not sure--but she had a job in public television. The other one was a woman named Nancy Stevens. Nancy was a practicing dietician--a medical dietician--at Massachusetts General Hospital in Boston.

LaBerge: Now, from what you've said, I can't even guess which woman you married. [laughter]

Belton: I see. [laughter] That's funnier than you know because I briefly dated both at first.

LaBerge: Well, I'd like to hear about that.

Now, does this mean that your mother went up there to meet the girls?

Belton: She took me upstairs, so she met the girls.

LaBerge: And then she left?

Belton: No, I suppose she stayed. I don't remember it exactly, but at any rate, my mother was very gregarious and she wanted to meet the girls too. So we all chatted. It was just before Halloween: it was late October because I remember the first night I went up there, they were carving a pumpkin, and the handshake that I got was wet from having been inside a pumpkin [laughter].

Anyway, we got to talking, and I chatted with all three of them. I guess they invited me back, or I invited myself back--I forget--but in due course, I began dating Nancy--the dietician.

We started dating pretty seriously very soon thereafter. It was in November. She would come down to my apartment or I would go up to hers, and she would cook for me and we would go out within the limits that we could. I didn't have a car, so going out meant she would push me down to Harvard Square, which was about three or four blocks, and there we could go to the movies or we could go to eat--things of that nature. It was close enough that Harvard Square was available for entertainment purposes in the evenings.

But of course I was very busy with law school and had homework to do most evenings, and so this was mostly on weekends, when I tried to get a change of pace, you know. You asked me how we met. That's how we met.

Issue of Disability in Dating and Marriage

LaBerge: Right, and Nancy is the woman that you married.

Belton: Yes. And now, there's a philosophical point here that's got to be explored at some point. That is, there's a big difference between becoming disabled after you get married and becoming disabled before you get married. It's a very big difference in many ways. Of course, you only do one of them, so I can't really speak for the other, but I know people who have done the other, who have become disabled after they got married. In fact, I worked on a famous case, which we'll talk about, where that was exactly what happened.

LaBerge: *In re Marriage of Carney*?

Belton: No, no, no.

LaBerge: No? Another one!

Belton: Yes, *Carney* was--well, that's true: there were two of them. *Carney* also was disabled after he got married. But in *Carney*, the marriage really had nothing to do with it, whereas in this case--*Rodriguez*, it's called--it had an effect on the marriage. I don't know, I suppose statistically more people get disabled after they get married, partly because people are married for most of their lives. You usually get married in your early twenties--most people--so you've got a much longer time being married than not married, so if you're going to get disabled, let's say traumatically or even through a disease, it's going to be after you're married, in most cases.

The other reason is that disabled people, I think, probably have difficulty finding partners to marry when they're already disabled. People look askance, let's face it, at a disabled person, depending on the degree of disability and the nature of the disability. I haven't read the literature, but I'm sure there are many studies of the effect of disability on the prospects of a person's getting married, and I'm sure they're all negative. You're damaged goods, in a way. As I say, it depends on the degree of disability, the nature of disability--

It depends on the personality of the person too. Some people, when they become disabled, become more introspective and shy. Some people are already introspective and shy just naturally, and those people would have a harder time finding a life partner even if they weren't disabled, and then even more so when they become disabled. But I'm not that way, as you have gathered already. I am outgoing and not at all shy--I guess I'm an extrovert--so it wasn't a problem for me to at least undertake relationships with people--both men and women.

LaBerge: Had you dated before you had polio?

Belton: Oh, sure. My goodness!

LaBerge: Seriously?

Belton: I was a college student! I had dates, I had a couple of girlfriends. Some of them were long-term, some were short-term, and some were a date for the next football game or the next dance.

No, I was very outgoing. I would say in high school too. I was very outgoing and interested in the opposite sex.

But, frankly, Nancy was the first person I had dated since I became disabled. That's more significant in a sense. And the reason was that for the first year--the first year after the onset of polio--I was just fighting to survive and to get back enough strength to resume my life. I didn't have time or energy to do anything else. It's a full-time job.

Then the second year, I was finishing up my college career, so it was my first year on the outside, as it were--my first year out in public and dealing with trying to get my degree--college degree--in those difficult circumstances.

The following year was my first year of law school, and anybody who's ever been to law school will tell you the first year of law school is pretty horrendous. Nothing prepares you for the first year of law school. It is not like anything you've ever done before. It's certainly not like anything you've done in college. It's a very different environment and atmosphere and demands on you.

It wasn't until my second year of law school that I felt I had enough time and energy and confidence in myself that I could even think about dating. Therefore, there was that three-year hiatus when I had other things to do which had to be done. But Nancy was very easy to get along with and to get to know, so it went very well.

We began seeing a great deal of each other, and it wasn't hard since she lived on the floor above me. In fact, it was the ideal arrangement because I didn't have a car and I didn't have an electric wheelchair, so I was very limited in how far I could get around outside. We're now talking November, December, it's God-awful weather in Cambridge, you wouldn't want to go far outside. So instead of having to go out, she would come down and knock on the door and pick me up, and then when she brought me back, I didn't have to call a taxi for her; she just took the first elevator. It was the perfect arrangement. [laughter] Perfect arrangement. If I went to her apartment or she came to mine, we didn't even have to get our coats on, which was fine and good. Most days the weather was so bad, therefore we did see a lot of each other--within the time I had from schoolwork, of course. She was very understanding about that.

So in--yes--that December--the Christmas holidays--we came back to New York City because it was a pretty long break at Harvard.

A Proposal on Cambridge Common

LaBerge: Okay, and "we" being you and your mom?

Belton: Right. I forget how we got back to New York City. Somebody gave us a ride, I guess. So I was away from Nancy for that period, which was the first time that we were separated since we'd started serious dating. It gave me time to think about where we were going.

I hadn't really thought about the idea that anybody would want to marry me in that condition, but I realized that maybe she would. We hadn't talked about it, but I realized that if any-

body would be a good person for me, she would. Not only was she a very nice person, but she'd already learned how to get me in and out of the car and handle me and push the chair. She was very good at that. She was a tall girl and strong, so she could handle the wheelchair even under the difficult conditions of Cambridge--which meant bad sidewalks and bad weather.

So I thought about it, and in the spring when I came back to Harvard, after I did the exams --the exams were in January, I think--we continued to date. And then--let's see--in March of 1958 I proposed to her. Are we getting ahead of ourselves here? No, I guess not.

LaBerge: This is still second year of law school?

Belton: Yes, in March of the second year. March 26 it was. I proposed to her one day on Cambridge Common, which is a nice place to do it. It was a beautiful spring day. She was very surprised by this, but she said yes.

But her parents were surprised also, and they had not met me because they lived in upstate New York in a town called Auburn, which is on one of the Finger Lakes--Owasco Lake--not far from Cornell, which was on the next Finger Lake in upstate New York. They hadn't come to Cambridge, and I certainly had not gone to Auburn, so they were quite surprised.

Meeting Nancy's Parents

Belton: Their names were Carl and Helen Stevens. They knew about me, they knew that she was dating me, they also knew about my physical condition. She was an only child, and they were pretty concerned when she announced to them--she didn't ask their permission, she just said, "Peter's proposed to me, I've accepted, and we're going to get married." They were pretty concerned about that, as I suppose any parents would be, so the first thing they had to do was come out and meet me. This they did pretty shortly afterwards--as soon as they could get away.

I was my usual self. My parents were both there, and they're both charming, outgoing, one French, one English, as you know, cosmopolitan and international, with many interests, and I think they charmed Nancy's parents. But they probably still had lingering doubts; I mean, I'm sure they did. We didn't talk about it a great deal, but they probably had lingering doubts until we got married and started a family and I had a career and they could see that I was going to be a good provider. They probably were worried, as anybody would be: How can he provide for her in this condition? I proved that, but it took a few years. So at first they were tentative about it, but I must say they were very supportive. They put on a great wedding--but that was further off. We were engaged a long time.

LaBerge: Now, were your parents concerned?

Belton: About what? By this proposition, that I was getting married?

LaBerge: Yes.

Belton: No. By then they both knew Nancy very well and were very fond of her, and they thought she'd be great. They were delighted because they knew I could make it. They had confidence in me.

There I was in the middle of Harvard Law School and doing fine, so they knew I was going to get a job. Nobody knew quite what job, but I was going to get one and be able to provide. Even this phrase "to be able to provide for a family" is so old-fashioned.

LaBerge: Yes, it is old-fashioned, isn't it? I mean, today--

Belton: You never think in those terms.

LaBerge: Although I'm sure people keep it in mind.

Belton: Yes, they just don't use the word. But in those days, it was a big thing, even though Nancy was going to be working--because she was already working.

LaBerge: And she was already providing for herself.

Belton: Yes, exactly. She was very independent. But, you know, children come along and then you only have one breadwinner, at least in those days. There wasn't much of this two-working-parent families--both working with little children in day care. In those days, there was very little of that--practically none. The word *day care* hadn't even been invented as far as I know. It certainly wasn't widespread like it is today.

Nancy's Family Background

Belton: Okay, at some point I need to tell you a bit about Nancy's background. Is this a good place?

LaBerge: Yes, perfect.

Belton: Okay, well, as I mentioned, she's an only child. She was actually born in Greenville, Ohio, where her mother's family originated and had a lot of relatives. Her father was from the north--upstate New York. He met her mother--he was a travelling salesman for a company in Auburn, which was one of the last great rope-making companies. Nowadays, people hardly use ropes for anything, but this was one of the grand old rope-making companies. It was called the Columbian Rope Company.

He traveled around the country with rope samples, selling rope. This is what people did in those days--still do, but it was more of a traditional occupation. The Colombian Rope Company had been in the same family for years--one of these old family businesses in this upstate New York town, just like in Massachusetts towns like Lowell there were old family textile mills. Rural Massachusetts was all textile mills. These things go back to the last century, or to the turn of the century at least.

They had the one child, and they lived in upstate New York. Nancy went to school there, and then, when college time came, she went to Cornell, which was, as I say, not too far away, although it was far enough away that she lived at Cornell. You can't commute. It's still a long drive. She graduated from Cornell, and she was interested in dietetics, so she went to do some graduate work and get advanced training specializing in dietetics.

She began working at Massachusetts General Hospital on a special unit called Ward 4, which became a famous operation for medical dietetics, which is to say--I hope I'll state this correctly--they had patients on the ward who had various medical conditions. One of the ways they were treating them was by carefully controlling their diets in consultation with the physicians. They would limit or control intake in this or that nutrient, and they would monitor the results closely. It wasn't anything like menu planning. It was a medical setting, working with doctors, and carrying out medical research programs on patients. It had become, as I say, famous by then, so it was quite a coup for her to be able to get employment in that situation.

She wanted to stay there, and of course, I had a year and a quarter of law school to finish, so we decided that we wouldn't get married until I graduated. So we had a long engagement--well, a 15-month engagement, which, again, is very old-fashioned. But that's fine. We saw each other all the time. In the following summer, which was my last summer in Cambridge, I got a job at the law school, so I stayed there that summer. There was a special program in what's called International Taxation.

LaBerge: We've talked about that.

Belton: Right, well, this was the program of that summer--the summer of '58--where I worked there. And she continued to work at Mass General, and then the same thing continued through my senior year until we got to the time to graduate.

I think I already mentioned that I didn't go to that graduation because I'd already been to my Harvard College graduation and it's the same graduation. All the colleges and graduate schools graduate together in one vast ceremony, all outdoors with thousands of people. I'd been there, done that. It was fine, but I was interested in getting married and starting my life--my post-educational life.

So it was arranged that we would be married at her hometown in upstate New York and then go on from there to my first job. I guess we should start talking about that.

LaBerge: Right. Well, how did it evolve that you were going to come to California? What were you thinking you were going to do?

Belton: Well, that's what I've just said. That follows from what my first job was, so we have to talk about it.

Wedding in Upstate New York, 1959

LaBerge: Right, yes, because you must have both decided together you were coming to California.

Belton: No, no, no. I mean, I'm afraid we have to skip to this next question, why California, because there wasn't any family at that point.

But let me just tell you about the wedding. I don't know if you care.

LaBerge: Oh, yes.

Belton: All right. Well, people came from all over. My college roommate, who I was very close to, came from New York.

LaBerge: And what was his name?

Belton: His name was Robin Farkas. He's mentioned in the newspaper from time to time. He is one of the family that owns a big department store chain in New York called Alexander's.

LaBerge: Oh, I know Alexander's. [laughter]

Belton: Well, Alexander was his grandfather.

LaBerge: Oh.

Belton: Yes, Alexander was his grandfather, but the chain was founded by his father, George, who named it after his father, Alexander, who came from Hungary, as a refugee--or an immigrant, excuse me--at the turn of the century. Alexander Farkas was just a very humble clothing vendor, but George was the typical American success story, where the first generation started a business and it grew and grew and grew.

George had several sons, and Robin was one of them. Robin was the second oldest. Sandy was the oldest. The name Sandy was short for Alexander. All the sons were groomed to continue in the business, and that's what they all did, or most of them.

Robin went from being my roommate in college to going across the river to Harvard Business School, did his training at Harvard Business School, and then entered the family business and is still in it. He's retired or semi-retired now, but that was his career.

Anyway, he came up from New York City, which I was very pleased about. My sister came up, of course, from New York City. And my parents were there. It was a traditional wedding in that my brother-in-law was the best man, in a traditional service.

But [laughter] wheelchairs can intervene in all kinds of ways.

LaBerge: Yes.

Belton: They had to build a ramp to get into the church because, of course, no churches in those days were accessible, and I was in a manual chair. Manual chairs have manual brakes. You lock a little lever down on each side. You lock the brake and it locks the wheel--the big wheel. When I got to the altar and was waiting up there, I applied the brakes, you see. My brother-in-law Roger [French pronunciation] was standing behind me.

Nancy came down the aisle. She looked gorgeous. She was wearing her grandmother's wedding dress, all white and lace, very traditional, long train and all that. We went through the service, except, of course, I didn't kneel down, I just stayed right there. Then it was all over and the time was to make our grand exit. But I forgot to unlock the brakes, I was so excited.

Roger didn't know enough about wheelchairs to realize what the problem was. He thought the wheel was jammed, so he basically wheeled me down the aisle by lifting the back wheels



Wedding of Peter Belton and Nancy Stevens, Auburn, N.Y., 6/6/59; also shown, Jacqueline Boutin, Peter's niece.

off the ground and just running it on the front wheels! In those days, the chairs were much heavier and I was much heavier, and it must have been a big effort. Of course, he was much younger. He's still with us, I'm glad to say. But this was a long time ago. This was 1959. 40 years ago.

Somehow we got out of the church. And when we got out there, Roger said, "How come this wheel doesn't turn?" [laughter] You never know when wheelchairs are going to play a role in even life's basic ceremonies.

Flight to California

Belton: Anyway, we got out, and we had a nice reception, at which my father gave a very moving speech. I wish I had a copy of it. Then the time came to go on to California, which means we had to fly out of New York City. So we came down to New York City--again, drove down--and this was the first time I'd been on an airplane since I'd gotten disabled--to fly to California.

LaBerge: How had you gotten up from Florida?

Belton: I'm sorry. I forgot about that. That's true. That's how we got up there. So it was the second time. But that trip was almost like a medical evacuation trip. I had my braces on and there were attendants all over the place. But this one--the thing that was unusual about it was this was from what now is John F. Kennedy Airport. The time came to get on board the plane, and there was no jetway. The jetway is the horizontal connection from the terminal to the plane. They had to go up the stairs, yes. In those days there were no jetways. If there were, they were only using them for occasional flights, but they certainly didn't have it--and this was a transcontinental flight on a big airline. It was American, I think, or United.

So we had to get up this long flight of stairs, and it's a big plane. I forget which one it was --a DC-6 or something--but it was a long flight of stairs. And either there was nobody around to help, or my father didn't trust anybody, but he and one baggage-handler type dragged me up those stairs. It was a long way up, and he really had to work hard to get me up there.

But, you know, in those days, there was no consideration for disabled travellers. People had no expectation the disabled were going to travel. It was very difficult. There were just no accommodations. No techniques had been developed, no protocols had been worked out, nobody had been trained. You were on your own. I expected to have the same problem at the other end.

LaBerge: I was going to say it, but they had to get you out somehow.

Belton: Yes, either that, or take me back. [laughter]

LaBerge: Well, were you going to California for a honeymoon?

Belton: No, for a job. Well, both.

Investigating Idea of Teaching Law

LaBerge: So tell me about that.

Belton: Okay, now we get to that. My first job. What brought me out to California. All right.

During my third year of law school, of course I began seriously thinking, as we all do, of what kind of legal practice I was going to do. You may remember that the dean had already told me I wasn't going to be able to do very much.

LaBerge: Right.

Belton: And I naturally was a contrary type and I was determined to prove him wrong, so I didn't even think about what he suggested: legal publishing. Although I'm sure it's a perfectly good career, I just didn't give it a second thought. Instead, I thought about teaching.

Always in the back of my mind, I thought that I could do that well, and I still think I could do it well. I dabbled in it one way or another, on and off. My mother, of course, was a teacher, and we had that tradition. It was a very honorable profession in those days, especially in Europe. Remember, professors in Europe were--and still are--very highly regarded. In fact, anywhere else in the world except the United States, when you call somebody professor, it's a very dignified title. That was true in France and it was true in England; so my thought was, Well, maybe I'd be interested in teaching law because (a) it would be in the legal field, and (b) it would give me the opportunity to teach. So I said, "Okay, how do I go about that?"

Well, there are several ways to go about it. What I didn't know then was that the most successful way to go about it is to go out and not do it, but to practice law for two or three or four years and then apply to be a teacher. That's the usual way that's done.

What I thought of doing instead--the first thing I thought of, was getting an advanced degree in law because that's the traditional way you get to be all other kinds of teachers. You want to be a biology teacher, you get a Ph.D. in biology. You want to be an English teacher, ditto. That's true of all these subjects, except law and maybe medicine.

There are advanced law degrees. There's LL.M.--Master of Laws--and what is now called J.S.D.--at least at Harvard it was called J.S.D.--which is the doctorate. That's Doctorate in the Science of Law. But practically nobody gets these degrees because you don't need them for any purpose. In fact, I seemed to notice that it was mostly foreigners who were getting those degrees because foreigners thought that was the thing to have, you see.

But it turns out in America, that isn't the way it works. In America, what the schools want is somebody who has had some legal practice, but not so much that they don't want to come to academia and take the pay cut that that requires. Because if you're in practice for even three or four years, you're going to take a big pay cut. They don't want you to take too much of a pay cut because then nobody would want to come back. Three or four years--it depends--has now become quite a customary way of getting into the teaching profession.

But I didn't know that at the time, and so I thought the way to get in was to take a master's or eventually a doctorate. Then I found out, no, there's another way.

Offer to Teach Legal Research and Writing at UC Berkeley's Boalt Hall ##

LaBerge: Okay, another way is to get a job as a teaching assistant.

Belton: Yes, and those were the days, in 1959, when a few law schools were just beginning a program, which is now widespread, where in the first year they would offer the students--or in fact make it mandatory--in the first year, most courses are mandatory, or were then--a course in legal research and legal writing, training people how to do legal research and how to write legal documents. It was a one-year course. I think it still is. Sometimes for no credit, sometimes for modest credit.

In 1959, only half a dozen major, forward-looking schools had developed such programs, so I applied to all of them. There were--I don't know--six or seven I applied to for that position. I thought to myself, Well, that would be a good way for me to see if I like doing it. If I do, it'll be on the resumé, and it may lead to a more permanent teaching position.

So I applied to them all, and I must tell you that I would have accepted the first one that came along. And if I had, and it was somewhere other than California, we wouldn't be sitting here doing this interview. I applied to--oh, I don't remember them all now--Yale and some in the Midwest--[University of] Chicago had one. I think UCLA had one. I think Tulane maybe had one. They were scattered around, no particular pattern.

But one of them happened to be [University of California, Berkeley's] Boalt Hall. So the first thing I got--two or three weeks, or a month later, I don't remember--I got this telegram from a guy named Frank C. Newman, whom I had never heard of, who was then a professor at Boalt Hall, offering me this one-year teaching position for the princely sum of \$4,950 for nine months, starting upon graduation, at some place called University of California, at Berkeley. Those were the days we had telegrams too, by the way. A telegram came in, and it was phoned in, and I said, "Would you mind delivering it so I can read it? Let's see if it's true." [laughter]

They delivered it, and I looked at it and said, "Great. How do I send an answer back?" I figured that out and I quickly sent back an answer accepting it. I didn't consult with anybody in particular.

LaBerge: You didn't consult with Nancy?

Belton: I don't remember now. I'm afraid that I don't remember. [laughter] But I have a feeling that I was going to go. It sounded good to me. Well, I do remember that after I accepted it, I said to myself, Now, where's Berkeley? I really didn't know. So we pulled out the old Rand, McNally road atlas and we looked under California. Here it is--C3! And you follow the lines. "Oh, there it is. Look, it's right across the bay from Frisco," as I called it then. What did I know? No, I really didn't know much about the place. I'd never been west of the Alleghenies, practically. I'd never been anywhere into the west of America, so it was all uncharted territory

for me and for Nancy too. But she said, "Gee, that sounds great." I mean, it was a job and it's a well-known school.

Welcome to Berkeley by Henry Rosovsky

Belton: It turned out my father had a business partner, who had a son, who was then the chairman of the Department of Economics at [the] University of California at Berkeley. And he went on to great things. He later became the dean at Harvard.

LaBerge: Who was this?

Belton: His name was Henry Rosovsky. At the time, he was an economics professor. He was a few years older than I--I don't know, maybe ten years. And as I say, later he was lured away by Harvard, which was his alma mater. He went to the economics department at Harvard and eventually he became the dean of the College of Arts and Sciences and then the provost and all kinds of things at Harvard. I think he's retired now, but he became a power in the Harvard administration.

But at the time, he was here, so that was at least somebody I knew. And indeed, he arranged to meet us.

That's how we came to California. We said, "Well, we'll honeymoon in California. That sounds great." But we didn't have much time to honeymoon because I had to start within a week after getting married. We had a summer training program to learn how to run this program at Boalt Hall. And we had to find a place to live that was accessible.

We got on that plane that I mentioned, and Henry met us at this end. He had his car, and he drove us back to Berkeley and drove us around a little bit. We stayed at the Durant Hotel until we could find a place--an apartment--which we subsequently found on Warring Street, in Berkeley.

Making 2450 Warring Street Accessible

LaBerge: Where on Warring?

Belton: 2450. I don't know how I remember these numbers. It was on the corner of Dwight Way.

LaBerge: And was it accessible?

Belton: Nothing was. It required various adjustments. It usually means building a small ramp. It had to be a place where there was no more than one step so you could make a little sloping ramp, which is what we had in Massachusetts, in Boston. No, actually, we invented something there too. You invent. In those days, there were no guidelines; you made it up as you went along. You had to be mechanical, as I told you earlier.

You often take off the bathroom door, which was always too tight, put up a curtain--and a few simple things like that. Some apartments you can convert into more or less accessible places to live. The bathroom was always the problem. Bathrooms are tiny, and motel bathrooms are even smaller. I mean, in those days. We did travel, and the tough spot in every motel that we went to was the bathroom.

LaBerge: Well, had you contacted Boalt to find out about accessibility to get into the building?

Belton: No. I don't think I even told them about the wheelchair.

LaBerge: So they didn't know.

Belton: No, they didn't know. No, I was going to do this on my own. This was not part of the record.

I'll tell you, in those days the way disabled people dealt with these things, they said to themselves, "This is my problem; it's not their problem. I'll figure out a way. If there's a way, I'll figure it out."

Now, we have an expectation. Now the disabled say, "I'm entitled. It's my right." Entitlement and right are the big words these days.

Well, in those days, nobody had a right to anything. If there was a way to get in, with a little good will and imagination and using a local handyman or the buildings and grounds people--I've described to you what we did in Prescott Street [in Cambridge] with my mother.

LaBerge: Yes.

Belton: I'll bring you a photograph of it. It was an ingenious invention, but you had to invent these things as you went along. You just got people who were carpenters and handymen, and they figured out a way. Sometimes they were safe and sometimes they weren't, and you didn't know they were unsafe until you discovered the risk. There were no standards, no specifications--nothing. Even if they wanted to build a ramp, nobody knew how to do it. They didn't know the slope and the width and all that stuff. I went up and down many of them that were, in retrospect, dangerous. But who knew? This was uncharted territory.

Getting to and from Boalt Hall

Belton: Somehow we got into Boalt. Boalt actually had a ground floor entrance--more of a side entrance. I could almost visualize it now. It wasn't the main entrance, but it didn't have steps. Once you're inside, you've got elevators, so it was okay. It was a lot easier to get around than Harvard Law School. It was the way California architecture tended to be. New England architecture is terrible. It's old and there's stairs everywhere. But California architecture tends to be ranch-style homes, and at most you've got one or two steps. You can deal with it. It's a much easier place, even then, to deal with than back east.

LaBerge: And what was Nancy going to be doing, or wasn't that--

Belton: Well, that was left up in the air. She did start looking for work when she got here and she did work for the University of California. Up in Strawberry Canyon they had a dietetic research department, and she did some work there for some months. But she also had to do what my mother had to do, which was to take me back and forth to school because I had no way to get back and forth.

The apartment was--what?--you'd go along Warring Street, and it's about six blocks to the campus. Five or six blocks. It's all level, and that's no problem, but of course, in those days, there were no curb cuts, so I couldn't have done it myself, even if I'd had an electric chair. Sometimes you can find a driveway, sometimes you can't.

Of course, I didn't have an electric chair then. I had a manual chair, which I could push around the classroom a bit, but there was a limit to how far I could push it. I had no strength in my arms. I wasn't like a paraplegic with normal--in fact, super-normal--arms. So, Nancy had to take me in the morning. But I was only teaching one course, and therefore I was only at the school for an hour or two or three, depending.

We had five sections, so I suppose it was several hours a day, but I'm sure it was early afternoon when I was through. There wasn't anything else I was doing at the time and place, so she had to come back and get me. Therefore, she couldn't work a full nine-to-five schedule either. Well, I suppose I could have found some student to do it, but, in those days, the two of us were so independent. We were an independent team. Certainly, we were a team. What had to be done, we did it.

She was strong and I had some mechanical abilities, and we put it all together. We each contributed and wound up with solutions. But that did interfere with her work for a bit. Then she got pregnant quite soon, actually, so that began to play a role in the picture.

Starting a Family

Belton: Let's see, we got married in June--June 6, 1959--and she got pregnant within a month. Therefore, by late fall, that was beginning to affect her energy and strength. She was getting to be pretty far along. In those days too, pregnancy was viewed as more--how shall I put it?--more of a disabling experience.

LaBerge: Yes, yes.

Belton: Nowadays, pregnant women often work up to the last minute, but in those days, people tended to stop work sooner and stay away longer. I don't want to sound fatuous, but you know what I'm trying to say--

LaBerge: No, no, it's true.

Belton: It was a different time and a different place.

LaBerge: Well, then she probably had less energy too to push the chair and do some things.

- Belton: Whatever the reason, she eased off her work at some point during the winter time. I forget exactly when.
- LaBerge: And it worked for you--I mean, being able to adjust to your schedule and pick you up and all that?
- Belton: Oh, yes. It was great. It made me able to do my job.
- LaBerge: You must have loved the winter weather, even though it was raining.
- Belton: Oh, it wasn't bad. Compared to Cambridge, it was heaven on earth. It was marvelous. Marvelous.
- LaBerge: Tell me about the issue of children because that's another thing Susan O'Hara mentioned: Many disabled people don't have children.
- Belton: Well, sometimes a disability actually prevents you from having children. Now, if you're post-polio, there's no impairment of the reproductive organs in any sense, so that's not a consideration. But if you're a paraplegic, either a man or a woman, and depending on where the break is, in most cases you have serious problems with the reproductive system. I can only imagine. I've talked to a few paraplegics, and I'm not going to talk about it now--. I don't know much about it, but I know that there are problems. And if you have a worse situation, then it can be commensurately worse--if you're a quadriplegic, for example. But with polios, that's no problem as far as the male is concerned. The polios--as I think I've explained to you--have normal sensory nerves. There's no impairment of the sensory nerves. The impairment is only in the motor nerves.

The virus is very specific: it damages only motor nerves in the long run. The sensory nerves, although they may be messed up a little at the very beginning under the onslaught of the first inflammation, usually come back within a couple of weeks. So, it's basically no impairment of the sensory nerves. And likewise, no impairment of any nerves relating to the other aspects of the reproductive function.

As far as women go, of course there are women who have been in wheelchairs from polio and have given birth. That can be done too because, again, it doesn't impair the reproductive functions; it's just that you have to go around in a wheelchair, and that may require just a different level of care and different training and things like that.

But in my case, we're only talking about the male having the disability, and it's not a disability. No, we always assumed that we were going to have as many children as we wanted to have. And that's more or less what happened. It's just not a consideration. Thank goodness.

Studying for the Bar Exam in Those Days

- Belton: During the spring, I began studying for the bar exam, starting in January. Now in those days--that's becoming a refrain here: [laughter] "Times are different." In those days--

LaBerge: Sounds a little bit like the Bible.

Belton: Doesn't it?

LaBerge: "In those days..."

Belton: Yes, "once upon a time," there were no bar review courses in the winter. The only bar review courses were given in the summer, and I couldn't take the summer bar exam because "in those days," I had arrived in California too late to qualify for the residency requirement--which, by the way, has been eliminated.

LaBerge: Oh, I didn't realize that.

Belton: Oh, yes, because it was deemed to be a restraint on the right to travel. Unconstitutional. That means if some state said you had to live for a year in the state before you could take the bar exam, that violates the freedom to travel clause of the Constitution--the freedom to travel theory of the Constitution.

But by the time I got to California--1959--it was still three months. The bar exam in those days was given at the end of August. I just missed it when I came in the beginning of June by about a week or two, so I couldn't take it. I would have preferred to take it in the summer to get it over with before my job started. There was a bar review course in the summertime, but no, I missed it. So I didn't have any choice, and I had to wait until the winter to take it. In those days, it was given in March.

But there was no bar review course in the winter, so I had to study on my own. Of course, since I'd not graduated from a California law school, there were a number of subjects that I didn't know anything about.

LaBerge: Like community property.

Belton: Community property, and they had a subject called "equity," which is not separately taught back East. It's taught in different contexts. Community property, of course, is the big problem. But I was able to get my hands on an outline for that one and a couple of others, so I spent most of January and February boning up. But we had no lectures, we had no test exams, so you had no idea if you were on the right track or not.

Race between the Bar Exam and the Baby

Belton: In the meantime, I was still teaching; and in the meantime, my wife was also getting more and more pregnant. It began to look like it was going to be a race between the bar exam and the baby. And that's exactly what it turned out to be.

Now the first child--you're never quite sure if you're going to have it right on time or a little early or a little late. We just had our estimated time of arrival, and it about coincided with the bar exam. That was exciting. I had made arrangements--obviously I had to--about what I was

going to do when the baby came, but it was really something of a distraction when I was trying to study for the bar exam.

The bar exam was held at Hastings Law School in San Francisco. It was a beautiful sunny day--well, sunny three days. I'll never forget, every time Nancy brought me to the bar exam and said good-bye at nine o'clock in the morning, I didn't know if she was going to be there when I came out at noon. It was that close. In fact, the baby was born about--what--ten days or so after the bar exam.

LaBerge: But you can't depend on that.

Belton: No.

LaBerge: How did you get to San Francisco? Were you driving by then, or not?

Belton: Yes, Nancy was driving. We bought a car when we got here. It was a Ford two-door sedan. You buy two-door sedans because the door opens wider--excuse me, more widely. The door opens more widely than a four-door sedan, and you need as much room as you can get if you're going to slide into the front passenger seat. You've got to be able to get the wheelchair up close.

We had a white Ford, which we bought new when we got here. It was only \$2,500. We had that for--gosh--a decade. That's how we got around. She would slide me into the front seat on one of these transfer boards and throw the wheelchair in the trunk, and away we'd go. Or the wheelchair in the back seat--either way--usually the trunk--and away we'd go. So that's how we got to the bar exam. But I wasn't driving of course; I was just the passenger.

Caliber of Students in Legal Writing Class

Belton: I want to say one more word about the course I was teaching, because it wasn't easy. The problem was that I was very disappointed by the quality of the students. Here we are in a premier law school in California--one of the top three or four law schools in the state, then and now--and the students in that law school, by definition, are going to be the cream of the college crop, and they, in turn, would also have been the cream of the high school crop. Yet, in many cases, before I could teach them legal research and writing, I had to teach them how to write English. I had the most appalling things handed in. It was clear to me that they had had very little English composition and grammar and syntax training in their earlier years.

As I think I told you when we spoke earlier, I learned all that myself in grades seven and eight, which is the time and place to learn it. By the time you get to high school, it's getting a little late. By the time you get to college, it's hopeless. And yet we have these students who show up--even today I'm told--in college. That's why they have all these remedial English courses in the first year of college--which are a great waste of time, when they should be starting their college career. They have to stop and learn things that they should have learned earlier.

Well, by the time they got to law school, you would assume that that had all been done. I assumed they'd learned remedial English in college--even in those days--but apparently it didn't sink in for some of these kids, because I had a lot of students whose English was so bad--their spelling, their grammar, their syntax--that I had to start out by teaching them how to do that.

A number of them, I just gave up on some words. For example, some of them were never going to learn how to spell the word "privilege." They thought of about four different ways to spell the word, believe me, and other technical terms that you had to learn in the law. But I did the best I could. They were bright kids, there's no doubt about it. And they probably were all going to make good lawyers because they could think well. They just weren't trained in the use of the English language, orally and written.

Words are the Lawyer's Tool

Belton: And that's sad because that's the lawyer's tool. The doctor has the scalpel, et cetera, but the lawyer has the words. It's the lawyer's tool. And I see it even today, I'm afraid. We'll get into that later--in the quality of the briefs at the court. They're often disorganized, repetitious, with terrible syntax. They look like they were dictated on a bus--done in haste. And these are briefs written for this court [the California Supreme Court], where you'd think you'd produce the best possible product.

But it begins way back there, and that's why this course was so important then and still is. It should be given more weight. It should be given greater credit. As I say, some schools didn't even give it any credit. Ours was only very modest credit. The kids, of course, take it less seriously when you don't--if you don't take it seriously, they're not going to take it seriously. For them, it was just an annoyance once a week.

But I tried to impress upon them: "You know, this is the tool that you're going to be using the rest of your life. You've got to be able to write letters that are persuasive and impressive to litigants, to clients, to co-counsel, and to opposing counsel, let alone briefs and arguments and contracts and everything else."

There were three of us who did that job in that year. Maybe the others weren't as concerned about this as I was. But it shouldn't be a surprise to you, knowing what you know of me, that I took this very seriously. The language, I was really very upset about. I annotated their papers over and over again. So that was a challenge.

Taking the Bar Exam with a Disability

Belton: Now we have to talk about the bar exam. The bar exam was a problem because I was facing the same difficulty I faced in my law school exams and my last year of college: I didn't have the hand strength to write for three hours. My hand would give out. In college and law school, they gave me extra time; so as the time drew nigh, I began negotiating with the bar examiners as to how I was going to deal with this.

Well, they didn't have the faintest idea because, again, who knew about disabled people? There weren't any disabled lawyers, or damn few of them at least, who were disabled at the time they took the exam. They may have become disabled later, but they didn't have to take it again. So the question was, How am I going to take the bar exam? Finally we compromised and agreed that I would be allowed to dictate my answers to a typist.

LaBerge: Oh, in a separate room?

Belton: In a separate room in Hastings. They said, "We've got plenty of little back rooms." In other words, "You're not going to get any extra time--exactly the same time as everybody else." But just as some people were allowed to type, in those days, most people still wrote it by hand. They were just beginning this idea of typing exams, and of course, nobody had laptops. So there was a room set aside with--God help us--people clacking away on IBMs--manuals, yet: *Clackety-clackety-clack*. That must have been an inferno of noise. But luckily, there weren't too many people that did it. Most people wrote them by hand, and it was a real challenge for bar examiners to read some of their handwriting.

LaBerge: And there wasn't a multistate then?

Belton: No, there was not.

LaBerge: So it was all essay.

Belton: Yes, it was three days of eight hours each of essays. Exactly. No multiple choice, no multistate. You had 24 one-hour essays to write, because you had eight essays per day for three days. So that was 24 hours of writing, and there was no way I could have done that.

I said, "Well, who's going to do the typing?" They said, "That's your problem," so I had to find someone. That wasn't easy. It had to be somebody who could take dictation right onto the machine because we couldn't have them taking it in shorthand and then transcribing it.

LaBerge: Not enough time.

Belton: Yes. They wanted it handed in right then, with everybody else. They didn't want any delays. They wanted to keep a tight control on this, which I understand. And I likewise had to learn, very quickly, without any practice, the art of dictating an exam answer in essay form, which I'd never done before. Who had? Why would you ever have to do that?

I did a couple of practices with Nancy and tried to figure out if I could write an outline with my hand and then, based on the outline, make it up as I went along, from the top of my head and hope that it was intelligible. I really resented this because I'm the one, as you know, who likes to polish and repolish my written words. I wanted to reread and reread and reread and change and polish it. The idea of sending it off into the night like this without ever seeing it--it's almost as bad as what you and I are doing now, except here I know I'm going to get a chance to look at it later. Of course there, I never saw it. Never once. Well, I saw it briefly. She pulled it out of the typewriter and she said, "Here." I had five minutes to go through and correct typos--

LaBerge: Or spelling. Maybe the person doesn't spell the way you do.

Belton: Or we had a homonym--you know, I said one word and she wrote the other word that had the same pronunciation. And she didn't know legalese.

LaBerge: Who did you find?

Belton: Well, gosh, I don't remember how I did this.

LaBerge: I mean, this person must have had to go through some check by the bar examiners that she herself didn't know law--

Belton: Right, right.

LaBerge: And coach you or whatever.

Belton: Well, it had to be somebody who didn't know any law, so that immediately meant we had problems with the language. She knew no legal language either. Frankly, that's one I don't remember. Maybe they made a suggestion, or maybe it was a secretary at the law school. I don't know. That would have been a logical place--somebody's secretary. Anyway, we got through it. It was three long days in those days. We didn't have this multiple choice stuff. I could have handled that. Three long days of essays, and then the agony of waiting.

But the baby came along shortly afterwards, on March 26, 1960, and that was a great distraction. Then I was finishing up my year at Boalt, so the time went by quickly. And I passed the exam.

LaBerge: Obviously you passed.

Belton: I didn't look back. Now we have to talk about--

Colleagues at Boalt and Distinguished Students

LaBerge: Well, before we leave your class and everything else, who were some of your colleagues? Or maybe you didn't socialize or--

Belton: In teaching? Well--

LaBerge: Besides Frank Newman.

Belton: Well, there were the two guys who had the same job as I, and one of them went on to great things in the southern California legal world. His name is Alvin S. Kaufer, and he went down to Los Angeles after he did this. It was a one-year job for all of us. He's now a senior partner in the Los Angeles law firm of Nossaman, Gunther, Knox & Elliott. He is very well respected, practicing mostly in the field of land use planning, things like that. And he's appeared before this court.

The other fellow's name was Joseph Hughes, and I lost track of him. For a while I'd see his name in town--he stayed in town--but I don't know what became of him.

As far as the other professors go, of course the dean at that time was Dean [William L.] Prosser, and he was a great character on the scene. He was in the closing years of his long career, but he was, of course, a great man. We all knew and respected him from his being a dean and of course writing *Prosser on Torts* and being the reporter of the *Torts Restatement* and so forth. He was certainly a well-known figure in California law.

Among the first year students that we were teaching that year were two whose names you will immediately recognize. One was a guy named [later, Governor] Pete Wilson. Another was a woman then named Kathryn Mickle, now [California Supreme Court Justice] Kathryn Mickle Werdegarr. They were both first year students, but they weren't in my group because we divided--faced with this mob, we said, "Well--

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LaBerge: Okay, we're talking about how you divided your class in legal writing.

Belton: Right. I took the first third of the alphabet; and then H--Hughes took the second third; and K--Kaufer took the third third. Wilson was in the third third and Mickle was in the second, and neither was in mine, so I didn't have the pleasure of teaching either of them. But of course many years later, it came around to roost, and we've had a good laugh over it ever since.

LaBerge: Did they remember you being there?

Belton: She did. I haven't spoken--I've never spoken to Pete Wilson in person--then or since. [laughter] Well, you know, he's not my party. So, but of course many years later, Kay, as she's known--Kay Werdegarr as she was then--shows up at the Supreme Court as a law clerk. She had previously been a law clerk on the Court of Appeal for Justice [Edward] Panelli. Then when he came to the Supreme Court, she came with him. I think I've got this right. Anyway, she was Panelli's law clerk--one of his staff. And of course, I got to know her then, as one gets to know the other staff members. I guess somewhere along the line, we realized that she had been in that class, and that I had been one of the instructors. And she's never forgotten me. She's very gracious about that, as I'll come to later. So they were two of the members of that group.

And there's one other I want to mention. A fellow named Bob Bell--Robert Y. Bell. He was one of my students, being in the first third of the alphabet. I have stayed very close to him ever since, which is quite a feat. He now practices law up in Santa Rosa, and he's a sole practitioner with all the difficulties that a sole practitioner has to make a living. He's a criminal defense lawyer, which is even more difficult because you have to get court appointments, and in small counties like that one, it's not easy to find such appointments. He hasn't had an easy time in his legal career. He's a very nice fellow and we've stayed close. He recently had a multiple heart by-pass. He's--what?--three years younger than I am, like all my students: I'd just graduated, and they were in their first year. So I keep in touch. I wish him well.

There's one other student I want to mention because he's a well-known person around the San Francisco law scene, and that's Jerry Ladar. Jerry Ladar comes from a legal family in San Francisco. His father was a partner in a downtown law firm, and Jerry was a senior in law

school when I was there. He was then and still is a great character, interested in theatricals. They had a student review every year at Boalt--maybe they still do--where they spoofed the professors, and he spoofed Prosser. He had the nerve to do it! Everybody was a little scared that he was going to do it, but he did it very well. Even Prosser loved it. Brought down the house. He continued to perform, and he still does: he performs every year in the San Francisco Bar Association musical comedy review.

LaBerge: Oh, I don't know about that.

Belton: It's to raise money for Legal Assistance for the Elderly. Morris Bobrow is a San Francisco lawyer who writes the songs and the skits. He's a real high-powered song-writer. [laughter] He does very good stuff. They're all topical satires on either non-legal or legal fads that are going around. We go every year and they're hilarious. They raise a lot of money for this group I mentioned.

Recently they've been performing in the Plush Room in the York Hotel on Sutter. But they've performed all over in big downtown hotels.

Jerry has always been one of the stars of the shows. He usually comes out in robes imitating a judge and does a beautiful job. He's just very good. He and his wife, who is a former deputy district attorney, Joyce, is now his partner in their law firm, and they practice just a block away from here on Polk Street.

As far as the Boalt professors go, it was mostly Frank Newman that I knew, because Newman was in charge of the program of first-year legal research and writing. Newman traveled a lot then, as he always did, so there were times when he was away and he asked if we would be interested in taking his classes--teaching them--as a change from teaching legal research and writing. I said, "Of course." For me, it was a chance to teach a big class instead of just a little section of 20. And in Boalt, the classes are big.

He was giving a class called Equity. That was one of his topics. It was a first-year class in a great big lecture hall with--I don't know--a hundred and some kids in it. I said I'd take it for a few sessions while he was away. I'll tell you, I was terrified because I had to come in there in the wheelchair, and I couldn't stand up behind the podium and stride around to intimidate them physically. That can be pretty helpful--to be able to physically intimidate them, jump up and down and point and all that. I couldn't do any of that, but I said to myself, "Peter," I said, "if you're going to make a career of being a teacher, this is what you're going to have to face, so you're going to have to give it a good shot." I prepared and prepared and prepared, and I was probably overprepared because I wound up lecturing more than I was supposed to instead of conducting the Socratic Method.

LaBerge: And, that wasn't a course you'd had.

Belton: That's right. I didn't know anything about the subject. I had to know a little bit more than they did; that was all I had to achieve, which may be what professors do frequently. [laughter] Anyway, I got through it. It was an interesting experience, but it was scary.

It taught me that, yes, I can do this. At least I was still open to continuing in the teaching career. As it turned out, it never happened, but it was certainly a distinct possibility and probably the main possibility, at that point, that I was thinking of.

LaBerge: Any more collegiality on campus?

Belton: No, we were really second-class teachers. We were just TAs. But everybody was pleasant to us. I stood out, as I always do, because of the wheelchair, and so I must have gotten to know a few of the others. Yes, I did. I did--some who went on to become deans and things like that. This was a long time ago. Herma Hill Kay, who is just retiring as dean, I think she was a student in that class too. It was quite a class. But the professors who were there then are all, of course, long gone, even the younger ones.

LaBerge: Well, is this a good point to stop? Okay, and we'll start next time with--

Belton: This job [at the California Supreme Court].

LaBerge: Yes--how you got here.

V EARLY YEARS AT THE SUPREME COURT, 1960-1964

[Interview 5: January 20, 2000] ##

Decision to Stay in California

LaBerge: Here we are, January 20, 2000, in Peter Belton's office. The last time we finished, you had taken the bar exam, you had your first baby, and you were still teaching legal writing at Boalt, so we were going to start with how you came to the California Supreme Court.

Belton: Well, as you remember, this was a one-year appointment, so I had to find a follow-up job. My original idea had been always, of course, to go into law teaching; I was, during my year at Boalt, doing a teaching assistant job. I talked to other professors there, of course. It was my first exposure to academia from the inside rather than as a student, and I learned from them that most people who go into law teaching do not go directly from law school or the kind of program I was in; instead, they go off and practice law for a few years, and then they apply for a teaching job.

As I explained earlier, this is a very widespread method of entering the law teaching profession. You make a name for yourself in some law firm or similar program, and then you have your experience to show. Of course, you have to have a good academic record to begin with, but you do need the experience. They want people who are not just academics, but people who have some real world experience. I realized it would be unlikely that I would get a job right away in teaching. They were hard to get anyway. They were in big demand--the jobs--so I said, Maybe there's something else I can do that would be interesting, that would not require me to run around all over town, but would be something more sedentary and research-oriented, which was what I was looking for.

I don't quite remember how I came up with this idea. I think I went to speak to the placement dean over there, whose name now escapes me. He was one of the vice deans at the law school, and he was in charge of placements--probably students, and maybe even some faculty. I explained to him my rather unusual situation, and, either right away or thereafter--I don't remember--he said, "There's a job I've been notified about that's opened up on the California Supreme Court as a one-year research assistant. Would you be interested?" I of course had no idea what it entailed, as very few people do until you get into it, so I said, "Well, let me go and find out what it's about."

LaBerge: Had you and your wife decided you wanted to stay in California?

Belton: Oh, yes. Oh, yes, particularly because of the weather. I'd just been through six years of Cambridge, Massachusetts, winters, and I hated them. It was bad enough when I was on foot, but when I was in the wheelchair, it made it even worse. It's very difficult to get around there in the bad weather. In California, I'd just had a year of San Francisco weather--well, actually, Berkeley weather, which was even better than San Francisco weather--and I said, "This is my kind of weather." It's perfect: not too cold, not too hot--just right--and lots of things to do and a great university there and much to stimulate the mind. It seemed like a good place to bring up children too.

Interview with Justice B. Rey Schauer

Belton: So I applied for the opening. It was on the staff of Justice B. Rey Schauer.

Justice Schauer was in the closing years of a long career on the California Supreme Court. I think he ultimately served 22 years. I'll have to check; let's stop the tape and I'll give you the exact number of years. [tape interruption] The answer is, yes, he did serve 22 years [1942-1964] on this court, and I joined him four years before the end of his term, so he had been on the court quite a while.

I came to apply for the job, and he interviewed me in this building, down on the fourth floor, where the court was then located. This is in the "old" state building as we call it--the new "old" state building. And it went very well.

He was a very distinguished gentleman--very courtly, an old-fashioned gentleman in the best sense of the word. He was then in his seventies, but he, I think all his life, had been a very gentle soul and very substantial citizen--just a perfect person for the job.

He told me what the job entailed, and it sounded interesting to me. I said I'd like to apply for the job, and he did hire me on a one-year basis.

In those days, each justice had three law clerks, staff attorneys. There was usually one or two permanent and two or one annual, depending. Some had two permanent and one annual, and some had one permanent, two annual, but everybody had some permanent and some annual in those days. I emphasize that because it's changed today.

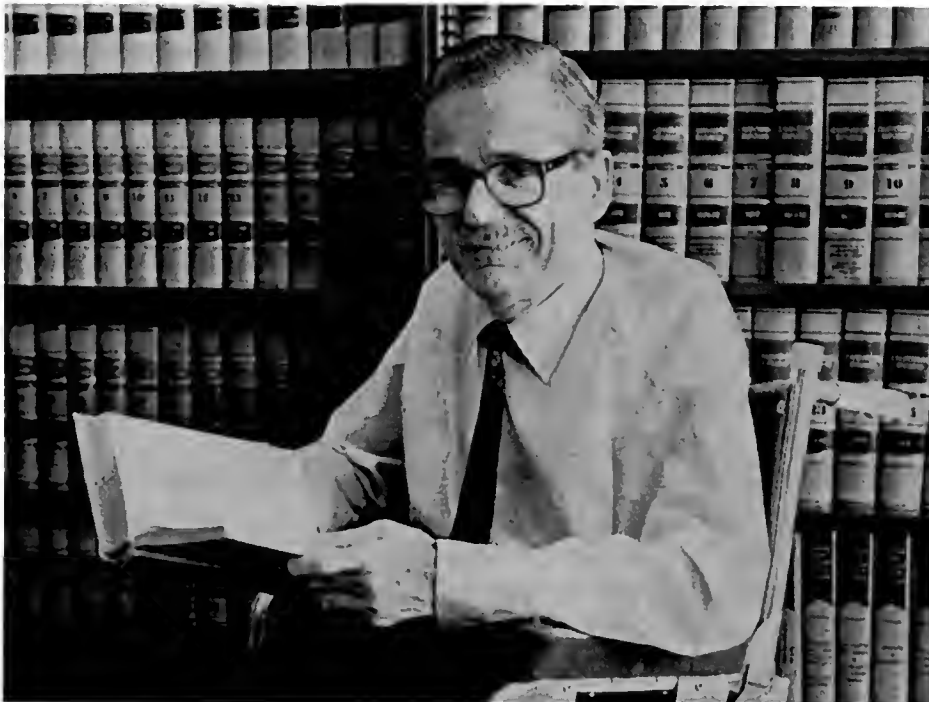
Justice Schauer was looking for an annual. He had two permanent--both women--who had been with him for quite a few years--Mary Jane Ellis and Miss Elmore--what was her first name? Josephine. We all called her Miss Elmore. She was pretty uptight. [laughter]

LaBerge: Well, what did the justice want to know about you?

Belton: He wanted to know my academic background, my interests, but he didn't say anything about my disability. He just assumed that if I was there, I was ready to--physically able--to do the



Justice B. Rey Schauer and staff, Supreme Court chambers, June 1964,
l. to r. Peter Belton, J. Ronald Hershberger, Betty Young, Justice Schauer,
Robert J. Taylor.



Peter Belton in his Supreme Court office, 4/2/85.

job. Because in those days I was using only the manual wheelchair, so I had to be pushed into his office and pushed out of his office. But that didn't seem to strike him as anything that would be a problem. No. Basically, we talked about what the court does, how it operates, and how I could contribute to that and whether my background would be appropriate for his needs. And it was.

This was, oh, it would have been about April or so--or May--of 1960. It was probably, yes, late April, early May, 1960. He had this vacancy as of that moment, so he needed somebody to start right away, which may have worked to my favor because I was available on the first of June. My academic appointment ran from June 1 to June 1, '59 to '60, so I was going to be available in a few weeks. I just needed time to get housing over here and so forth, so it fit into his needs. He offered me the job and I took it.

Then we had to, as I say, find some housing, and we found an apartment out in what's called Parkmerced, which is a large rental housing development, out near Lake Merced, in that far distant part of the city. But it was perfect for us. It was a flat, level area, accessible, and so forth.

So on the first of June, 1960, I started work on the court, and I've been here ever since--over 40 years.

First Year Annual Law Clerk

LaBerge: Well, do you remember your first day? Or the first week? Could you describe the orientation, what you did?

Belton: Yes. It was mostly a combination of meeting my fellow staff members on the other staffs--which, as I say, in those days, was a very small, congenial group. They're still congenial, but they're a lot bigger now. There were--the six associate justices had three staff attorneys each, as I mentioned, and the chief had a couple of extra. The chief always has a couple of extra because of his other duties, so that meant three times six--18--and then the chief's people. Just a couple of dozen, at most, people to get to know. I was a little unusual because of the wheelchair. I caught people's eyes, and as a result, people came around to say hello and introduce themselves. It didn't take long to get to know everybody.

We were all really closely located too. All the offices were together on the fourth floor. Now [2000], we're spread over two floors--in fact, four, if you count everybody--but in those days, everybody was on one floor because the staff was so much smaller. I got to know everybody. The other thing was just getting to know the physical layout: figuring out how to get to the library, how to reach the books, how to get into the restroom, how to get in and out of the building, all the basic access problems that you had to deal with.

I got right down to work and did the job of a first year annual law clerk, which in those days was largely drafting conference memos--which is explained in this book I'm going to give

you here¹--because in those days the court had no central staff. Now we have two central staffs, running about 15 lawyers each, so that's another 30 lawyers. One civil central staff and one criminal central staff. The function of the central staffs today is to handle all the petitions for review and write the conference memos, but in those days, there were no central staffs and all the conference memos were handled by the individual justices' staffs. At some point do you want me to talk about what that means?

LaBerge: Yes, because even though it's in the blue book--which maybe we'll include, or we'll include in the papers--I'd like to hear it in your own words.

Belton: All right.

LaBerge: Although, maybe you wrote that too.

Structure of the Court and of the Judicial System

Belton: No, no, I didn't. No, it's pretty standard stuff. This is going to be a digression on the structure of the court and the structure of the judicial system.

Well, it has changed a bit, but the basic structure is still the same. In California, we have three levels of judiciary: we have the trial courts, we have the intermediate appellate courts--called Courts of Appeal--and the Supreme Court. I'll simplify it for the trial courts by assuming that there's only one level of trial court, the so-called superior court, which is almost the case today. It wasn't in those days. In those days, you had municipal courts as well. That's pretty well all gone now. It's now been consolidated into one trial court, structured as superior courts.

The way the system works is that the party who loses the trial appeals to the Court of Appeal. That is an appeal "as of right." That is to say, he doesn't have to ask anybody's permission. He can simply file a notice of appeal and he's on his way to the Court of Appeal. I'm simplifying here, but that's the basic structure.

The Court of Appeal decides the appeal, and then the party who loses in the Court of Appeal, or, indeed, the other side if they're dissatisfied with the Court of Appeal's opinion, even if they won--either party--then petitions our court, the Supreme Court, to take the case on a discretionary basis. The court has discretion to grant or deny that request.

When I first came on the court, they were called "petitions for hearing" and had been for decades. In 1985, it was changed to a new structure, which I'll talk about in a couple of minutes. But in those days, in 1960, they were called "petitions for hearing." The petitions would be filed in the Supreme Court Clerk's Office and would be assigned in mechanical rotation to each of the associate justices in equal number, so everybody had the same workload. And they would number--what? There were a lot less in those days because there were a lot

1. *The Supreme Court of California, Practices and Procedures*. 1977 Revision.

less C.A. [Court of Appeal] judges too. Maybe ten per staff per week? Something like that. Eight to ten per staff.

LaBerge: Meaning per staff member, like you had--

Belton: No, per staff justice. Per justice. And he would distribute them among his staff--I say "he" because they were all men in those days--or his staff would self-select them--either way, as long as they got done. The staff member would then study the petition and review the facts that are alleged; review the law that was invoked, and determine that the parties stated the law correctly and didn't, you know, intentionally or unintentionally misstate the holding of a case or of a statute; then apply the law to the facts; and reach a conclusion as to whether or not the court should grant the hearing.

It was then, and still is, very much a question of judgment because we have certain standards that we apply. The two basic standards in determining whether to take a case are, one, whether there is a conflict of decisions in the Courts of Appeal. In those days, there were, let's see, about 16 different divisions of the Courts of Appeal. Well, there were four districts with three or four each? And there may have been 30 or 40 Court of Appeal justices. Today it's--what?--almost 100 justices.

But even 30 or 40 Court of Appeal justices can reach decisions that conflict with each other, and different districts of the Court of Appeal can reach different decisions on the same question. So one of the functions of our court was, and still is, to resolve any such conflicts. The Courts of Appeal can't resolve it. If the Court of Appeal of the first district views a legal issue one way, and the Court of Appeal of the second district views it another way, they don't have to agree. They don't have to follow each other; they can disagree. So we intervene and resolve the question. Sometimes they'll even ask us to do it, although that doesn't guarantee we'll do it.

The second ground for granting review is the settlement of an important question of law. That refers to, usually, a question of first impression, that's to say, that hasn't been settled, hasn't been definitely resolved--not necessarily, but usually it hasn't been resolved. And it has to be an important question; it has to be something that affects a lot of people in the state or some major institutions of the state. It can't just affect one individual, or it's not considered an important question of law. That's sad, but true.

Basically, the California Supreme Court sits, then as now, to oversee the rational development of the law of California--the case law of California. It doesn't sit to resolve questions of justice between individuals. That occurs in the Court of Appeal. If you want justice, you go to the Court of Appeal; if you want some legal issue settled, you come to us. That's our function under the [California] Constitution. It really couldn't be any other way.

If we tried to decide individual cases just because they were appealing and somebody had suffered some wrong, we would never get through. There are thousands of them in this state. The Court of Appeal nowadays decides something like 11,000 opinions--files something like 11,000 decisions a year--11,000! Well, that's okay if you divide it among 100 Court of Appeal justices. Then it's about 100 each--110--110 each. But our cases tend to be much more

complicated and take longer to work on and longer to decide: if we put out 100, we feel we're doing well for the whole court in the space of one year. We aim for 100 a year if we can, and usually we get there. But not 100 per judge: 100 per court. We would never finish if we did anything other than that.

That's what you're looking for when you're deciding to recommend whether to grant or deny a hearing in this court. As I say, that's a question of judgment. You have to consider, for instance, Is it important enough? Is this a deep enough conflict? Sometimes there'll be a conflict in the Courts of Appeal, but this court will decide it's not ripe yet. We might want to let the Courts of Appeal work on it some more.

Or a case will come up which may or may not be ripe, but before we take it over, we say, "Well, let's sit back and let another C.A. address the same issue and see if they follow it." If they follow it, that solves the problem; it's good law. If they disagree with it, then we have a conflict, and then we have to step in. We have to exercise judgment at every step in this process.

Drafting the Conference Memo

LaBerge: As a staff attorney, were you exercising that kind of judgment?

Belton: In the first instance, yes. In other words, we were expected to make a recommendation--each of us to our own judge. To make a recommendation on the basis of our best judgment, and then he could either agree or disagree with it. To some extent, the conference memo was an adversary document in the sense that--well, that's not the right word. It's more of a document meant to persuade. You would lay out the facts and the law, and you would state why you thought it should be granted or denied, attempting to persuade first your judge and then, through him, the rest of the court.

I have to say right away that, then, as now, the proportion of cases that got granted was and is minute. Only four or five percent get granted on average. In the criminal appeals it's probably just a few percent; in the civil appeals it could be a few percent more, but not much more. The vast majority get denied. It's very difficult to get a grant. And it should be.

So if you are arguing for a grant in a conference memo, you have to make a pretty strong case because the institutional bias is against it. We reserve the grant vote for the cases that really deserve our attention. The conference memo writer has to draft the facts and the law, and then he has a choice of several recommendations to make. In those days, there were just three. You could recommend grant, or recommend denial, or you could submit it.

A submission meant it's very close: I'm submitting it for everybody else's consideration. In other words, it was too close to call, and it could go either way. It could be close because either it's a great case but the facts are not good-- the facts are unclear; or it could be that it's a

marginally important question, but it could recur over and over again--things like that, that require everybody's input.

The conference memo writer had the obligation to choose the recommendation in the first place, and then you would draft the memo. It would run, oh, three to five pages, typed. Type it up. Of course in those days, no computers, so "type it up" meant "type it up." [laughter]

LaBerge: Yourself.

Belton: Yes. At least we had electric typewriters, although there were holdouts in that regard too. I remember that Olga Murray, a famous woman attorney on Justice Mosk's staff, adhered to her loyal Royal--

LaBerge: Like Herb Caen. [laughter]

Belton: Like Herb Caen--her loyal Royal manual typewriter, for years after everybody else was using computers. But anyway, we had no choice. You would type it up.

LaBerge: And how long do you think you'd spend, on the average, preparing this?

Belton: Oh, that's a good question. About a day and a half. Two days at most. I used to have to do about three or four a week. That was the primary responsibility of the annual law clerk.

But just to finish up with conference memos before we get to the other category: I would then give the conference memo draft to the judge and he would look it over. In most cases, he would tend to agree with my recommendation, but if he didn't, he would bring it back to me and he would say, "Peter, I'd like to go the other way on this. Can you write it up the other way?"

Well, we were hired guns. Our job was, as it still is, to write it the way the judge wants it. You try and foresee the way he's going to go, and after a while you get to know his tendencies and predilections and views, so you try to foresee them. But he might have some personal interest in the subject or might see the case differently from you. He might think it's more important than you do, or less important. Either way, he has the last word, obviously. We were just there to assist. So he would say, "Write it the other way," or he'd say, "Let's just submit this one. I don't feel as strongly about it and let's see what the other judges want to do," and so we'd submit it. Or he'd just make changes of style--add a few words, take out a few words, calm it down, or punch it up as needed. Obviously he would accept our statement of the facts because we had more time than he did to extract the facts from the record, from the petition.

LaBerge: How much discussion would you have? Or would it be mostly in writing that?

Belton: Yes. For conference memos it was kept pretty simple. I'd say as I handed it to him--I might say, "This is an interesting one," or, "This involves an issue that we've had before," or something like that, but the memos are supposed to speak for themselves, so he would usually just read the draft.

If he thought it was fine, he would give it straight to the secretary and she would put it in final form. If he didn't think it was fine, you'd negotiate with him, and eventually you'd work

out an agreed version. It would then go to the secretary, and the secretary would type it up in final form, turn it in to the court's traffic manager, who'd circulate the cases. They're called the court "secretaries." Well, they're called the calendar coordinators now, but the point is, their job is to keep the cases moving. They would have it reproduced in the photocopy department, and copies would be distributed to all the other judges. Then they would do the same to my judge. Everybody would send their memos to everybody else, so that part of the process is sending out our memos, and part of the process is dealing with the memos that come in from the other judges on their cases.

Now different staffs operated in different ways on the second part of that. Justice Schauer, and since him, Justice Mosk, relied on his own time and energy to review memos from all the other judges, and didn't ask his staff to help him on that. Some justices ask their staffs to help them with this flood of incoming memos. You can do it all kinds of ways. It's up to each judge how he wants to do it.

For instance, one judge might say, "Well, if a case comes in with a grant recommendation, that is pretty serious, so I'd like one of my staff to look at it first, and then I can discuss it with that staff member. But if it's a denial recommendation, that's more routine; I'll just read that myself." You could do that and divide it that way, you see. But my judges--Schauer and Mosk--happened to want to review all the other judges' memos themselves, and that's fine. That was one less thing that I had to commit my time to.

Anyway, Judge Schauer would review all the conference memos that came in from the other judges, and he would vote in his mind as he read it: "Yes, I agree with this," or, "No, I don't agree with this." That's how they all do it.

Wednesday Conference: Absolute Majority Vote

Belton: Then the justices meet once a week in what's called the conference, which is pretty well always Wednesday mornings, for two or three hours, in which they vote. This is still the way it's done. They vote on all the petitions that have been prepared for decision during the previous week, so a week's worth is disposed of. The following Wednesday another week's worth is disposed of, and that's how they keep up with the incomings.

At the conference, let's say you have 60 or 70 matters--today it's more like 120, but there were less of them in those days--the judges vote on whether to grant or deny the petition in each case. If there are four votes to grant, it's granted. If there are not four votes, it's not. In other words, it takes an absolute majority, which is different from the United States Supreme Court, by the way: it takes only four votes out of nine to get a case granted by the United States Supreme Court. In our court, it takes four out of seven.

From time to time, Justice Mosk has proposed that we follow the United States Supreme Court procedure and reduce the number of votes necessary to grant from four to three, but that has not met with acceptance by his brethren the two or three times he's brought it up. There are

pros and cons, which I won't go into at this point. But that's the way we've always worked. It takes the four votes out of seven.

When a petition--just to finish the sequence--is granted and the case is taken over, the Chief Justice then steps in and assigns the case for opinion. This is now the second stage of the process.

Assignment of Cases by the Chief Justice

LaBerge: Okay. Now does the Chief Justice's staff, or does he, go over any of these granting petitions?

Belton: In those days--and indeed today, because today the civil central staff and criminal central staff do all the petitions--but even in those days, it was only the six associate justices who wrote the conference memos. The chief has so many other duties that his staff did not do that. But what he did was, after conference, he would collect and review the grants and assign them to individual justices, or to himself, for opinion.

Exactly how he did that, I have no idea. I assume that he consulted with some of his staff and also looked at the workload, because his goal, again, was to keep the workload fairly even. So it wouldn't automatically go back to the judge who wrote the conference memo. Sometimes it did. Maybe more often than not it did, on the theory that that judge had already become acquainted with the case to some extent, but it wouldn't automatically go back there.

Two examples would be if there was a judge who, for one reason or another, was ahead or behind on the average workload, it would be assigned with that in mind; or if it were, as in some cases, an issue in which that particular judge had developed a certain expertise in certain narrow fields of the law--by chance or design, he might have written several opinions on the same issue--then it might be appropriate if this case was yet another development of that other issue--that earlier issue--another facet of that issue. It might go to that judge instead. Although that, I think, is less true now than it used to be.

Drafting the Calendar Memorandum ##

Belton: I'm trying to keep this in sequence, but I think it does follow.

LaBerge: Oh, you know what? You speak in paragraphs. [laughter] It's part of your nature.

Belton: All right. So should we go on?

LaBerge: Yes, yes.

Belton: The chief, as I say, assigns the case to an individual justice after review is granted. Then the case comes to that justice, and at that point a couple of things happen. First, all the record is brought up from the Court of Appeal. Previously, when you're just considering the petition, there's no big record that comes with it because you'd be overwhelmed with paper, so you just have the briefs and a few other simple documents. There's some record, but not a lot. But once you grant review, then everything that was before the Court of Appeal comes here. And that can be thousands of pages, depending on the case. All that is assembled and made sure it's complete. That comes to the justice in question.

He then assigns it to one of his staff attorneys to work on. It's on an individual basis. You really can't have more than one person working on one of these cases at a time because you'd just get lost. It would be too confusing. You have to have one person who takes the case and figures it out and becomes acquainted with the facts and the trial and the issues and the law. What that staff attorney does then is prepare something called a calendar memorandum.

The calendar memorandum is the second document in this sequence. The first was called a conference memo. The calendar memorandum is designed to put before the judges what they need to know for oral argument, which is the third step of the process, so the calendar memorandum is prepared before oral argument. It is a much expanded version of the conference memorandum, and to some extent it's like a draft opinion. It's much longer. It can run anywhere from--well, a short one would be 15, 20 pages, and they can go up in death penalty cases to 150 pages or more. The average non-death penalty case is maybe 20 to 40 pages, typed, depending on the complexity of the facts or the legal questions. It sets out the facts in much more detail than the conference memo and then analyzes the contentions made by the parties. It proceeds to determine whether the law that they claim is correct, and how that law applies to the facts, and concludes again with a recommendation of what to do about the case, now on the merits.

That obviously takes a lot longer than writing a conference memo. You can do a conference memo in one or two days. A calendar memo can take weeks or even months, depending on the complexity of the matter. But somebody has to do it, and it takes a lot of time and a lot of effort, and the judges simply don't have the time to do it. It's just impossible. They have many other things to do, which we'll come to next.

Petitions for Review, or Deciding What to Decide

Belton: To start with, they're spending something like two-fifths--from two-fifths to half of their time just reviewing the conference memos to determine which cases to grant. Justice [Mathew] Tobriner used to say, "I spend more than half my time here just deciding what to decide." That's what it comes down to. And there's no other way. That decision has to be made by the justices. It's highly discretionary--the granting or denial.

There are so many petitions that come in, and they're getting more and more of them, that it just takes so much time. When I started here, there were maybe 60 matters a week. Now it's 120. It's doubled. And there are still only seven justices.

The reason it's doubled is, of course, that the population of the state has doubled since I've been here, and the number of trial judges has doubled--maybe more. The number of trial judges and Court of Appeal justices has doubled because the number of trial judges and Court of Appeal justices is dependent exclusively on the Legislature. The California Constitution is silent on that question. What happens is that the Legislature, in response to the growing number of people in California--which means that much more litigation--creates new judgeships almost every session of the Legislature, either at the trial level or at the intermediate appellate level. The Governor fills them, and the pyramid gets broader and broader at the base. Just think of it as a pyramid, and there are more and more people pouring stuff into deciding trials, and then deciding appeals, all of which theoretically can be reviewed by our court, so that the number of petitions for our court's attention rises steadily.

But there are no more than seven justices on this court because that's provided by the [state] Constitution. It's been that way for an entire century. The court started out with only three justices, then it went to five in about the 1880's, and around the turn of the century, it went to seven, and it's been seven ever since. Now it could go to nine, as, of course, the United States Supreme Court has nine, and some state courts, like Washington State, has nine. There may be others. But that has not happened. Until it does, the pressure will just continue. I'm not saying it should have. It would change this court in various ways. But there's no movement for that, that I know of.

So the judges have less and less time to spend on each individual case as more and more cases are presented to them. Perhaps half their time, as I say, is spent deciding what to decide, and the other half of their time is spent deciding the cases that we take.

That means reviewing their own work and reviewing the work of the other judges. But the process is similar for the second stage. The staff attorney works on the calendar memorandum. It's similar in the sense that it's the staff attorney's responsibility to prepare this document and submit it to the judge. It's different in the sense that because this is an actual opinion in the making, there's much more interaction between the judge and the staff attorney during the process.

Discussions between Staff Attorney and the Judge

Belton: For instance, most often the staff attorney will talk to the judge about the case before even starting work on it to know, "Where are we going here?" It's easy enough to do a conference memo over again, but you wouldn't want to do a calendar memo over again very often because it takes you, let's say, a month to do it. That's a wasted month. You can't afford that, so you want to know which way the judge wants to go. Now, this may be clear to you from a variety of sources, but it's probably a good idea to make sure.

Then in the course of drafting the calendar memorandum, the staff attorney may wish to consult with the judge on one point or another as he goes along. Something may come up--some question that is inconsistent with the position the judge has taken in an earlier case, or, should we disapprove this Court of Appeal case, or, should we overrule one of our own cases? We have the power to do all these things, but whether to do them is a matter of discretion and judgment, and there's usually much more interaction between the staff attorney and the judge in the process.

Then when the draft goes to the judge, there's often more interaction after that stage, too, because the judge is looking at something which is probably going to evolve into a draft opinion with his name on it--public. Whereas conference memos are never public; they're all confidential in the court.

LaBerge: What happens to them after?

Belton: Oh, they get archived. Now they're all online. They're archived. They used to be kept in boxes. Now we've got a modern system, and they can be referred to if you can find them. It's an indexing problem because there's so many of them. People and individual staffs, of course, are free to keep their own copies; and you can make your own collection of certain issues and so forth. But they're not public; whereas the calendar memos, which were also not public as calendar memos, become, in most cases, an opinion, so they're going to see the light of day. Therefore, the judge has to be happy with the wording of them--both the organization of large-scale matters--organization and arrangements--and the small-scale matters of individual issues or precise wording of particularly important parts of it.

In the course of any opinion, you'll have some general language whose words are not particularly significant, but then the court may say, "So we adopt the following rule," and they'll state a rule, and you've got to make that rule as perfectly stated as you can. You're acting like the Legislature. You're drafting words which will be followed slavishly by a lot of other people and interpreted, so you want to make it as clear as you can and include no more nor less than you want to say. Be as precise as you can.

For that kind of thing, you have to work on the wording very carefully with your judge. And each judge does it differently, just as in the conference memo, say. Some judges are more hands-on than others; some rewrite more than others. It varies.

LaBerge: How about Justice Schauer?

Belton: Yes, I think it's about time I got back to him. Actually, let's see, is that as far as we need to go in the sequence, or do we want to get into the oral argument?

LaBerge: What do you think?

Belton: I'm trying to decide which way to organize this. Maybe it would make more sense just to finish the organizational sequence.

LaBerge: Yes, and then we'll go back to Justice Schauer, okay.

Belton: Yes, okay, it's a deal.

The calendar memo, then, is finally agreed to by the judge, and the same thing happens: he gives it to his secretary, she types it up, circulates it to all the other judges, and they all review it. That takes a lot of time for the court too because these are much more substantial documents.

There again, each judge handles it different ways. Most judges will ask their own staff to look at the calendar memoranda by other judges, so they can get their input and their preliminary review. But the final decision, of course, is for the judge to make the call on whether he agrees or not with the calendar memo.

LaBerge: And when you say "asks his own staff," do you mean the whole staff, or just one person?

Belton: No, usually one person. None of this work could be done by committees very successfully. It's just too individual. Although, again, different justices may do it differently.

At this point, I'm in something of a quandary because I started out discussing what we were doing in 1960 and now in 2000--in fact, since 1985, we've done it quite differently in some important particulars. There's not much point in my describing what we used to do, is there?

Procedure for Oral Argument, 1960-1985

LaBerge: Oh, yes, for historical purposes, yes.

Belton: All right. It may be a little confusing. I'll try and make it clear. Well, for historical purposes, I can see it's worth talking through, so let's go back to 1960. From '60 to 1985 this is the way it worked. The calendar memos would be circulated before oral argument, and that's all that would happen before oral argument in the way of interaction between the judges about any given case. They really wouldn't talk about it as a group until oral argument. In fact, until after oral argument.

The next step then would be oral argument, which would be the next major step. Oral arguments were then and are now--so some of these things are still true--scheduled ten times a year. In each month there are oral arguments, except the two summer months, July and August, because people tend to be on vacation. In each month it's usually the first week of the month, and the number of days consecrated to oral argument varies each month according to the number of cases that are ready to be heard.

In the sixties, I will say that the court heard more cases than it does today. It's possible that--there are a lot of reasons one could think of. One reason is that the issues were simpler and they were more single-issue cases that were not particularly difficult for the court to resolve, and it could prepare a lot of calendar memos.

When I first came on the court, the court would hold four oral argument weeks in San Francisco, four in Los Angeles, and two in Sacramento. Now that schedule still obtains today. They alternate. They'll have one in Sacramento, one in San Francisco, one in L.A., another one in San Francisco, and then another one in L.A. They alternate like that, spread out over the calendar year.

The length of the calendars in those days was greater. For San Francisco and Los Angeles, we would virtually always have five full days of arguments. A full day of argument started at 9:00. The arguments were one hour each--9:00 to 12:00--and then they'd pick up again from 1:30 to 3:30. You'd hear five a day, times five days; so a calendar, as it's called, would be 25 cases. That has evolved into much lower number for various reasons, but that's what it was in the sixties.

LaBerge: And do the staff go to oral argument?

Belton: Anybody can go. They're open to the public. The staff--you always go if it's a case you worked on so that you can be there to see what happens in the way of questions and answers. Sometimes parties will concede things. You need to know all that. But all oral arguments are all tape-recorded, and you can also listen to the tape afterwards, as if you were there.

Since the court is headquartered in San Francisco and has been since the turn of the century, for oral arguments in Los Angeles, the staff rarely goes down to Los Angeles. The judges go, and a couple of the court assistants and the so-called court secretaries go, and the bailiffs, and people like that. But the staff attorneys tended not to go, or, of course, the judge's secretaries either, because it's a question of time and money. If we wanted to go, the state would pay our transportation, but it's not likely that that's necessary because of the tape-recording facilities. You just wait until the court comes back, then you take the tape and listen to it; and it's as if you were there. But that was a good question, and we do attend.

Other people can attend too. There's often classes of law students on field trips in the courtroom, or just friends and relations, or maybe parties or people who don't have anything better to do. It's open to the public. It's not too exciting in most cases, and a person from the public would be mystified by most of it. If they want to do something like that, they should go to a trial where it would be more exciting because that you're used to from television. [LaBerge laughs] Although they're not as exciting in real life as they are in television--"People's Court."

The case then comes on for oral argument, and it's assigned one hour's time. Each side gets half an hour. After the oral argument, on the very same day, late in the afternoon --and this is still again the court's practice--or sometimes even late in the morning for the morning session, and then again in the afternoon for the afternoon session--the court meets in a private conference in the chief's chambers. The judges discuss the cases they have just that very moment heard argued to them, and these cases they then vote on. Basically they vote: Do they agree with the calendar memorandum or don't they? The calendar memorandum will propose to affirm, reverse, or whatever; and the question is, Do they agree with that or don't they?

They take a tentative vote, and if there is a majority for the position taken by the calendar memorandum, the chief makes a final assignment of the case, assigning the case to that justice for opinion this time. The previous assignment was for a calendar memorandum.

If it turns out that the calendar memorandum does not have a majority, the chief will reassign the case to another justice who represents the other viewpoint. This happens from time to time. Cases can be reassigned at any point. It may turn out that, for instance, the justice who wrote the calendar memorandum said in conference, "Well, let me try and modify it to satisfy everybody," and he will then make some further efforts which may or may not persuade the others; and if they don't, then it'll be reassigned, but it will be reassigned later on. It can be reassigned at any time.

Attempt to Find Consensus

LaBerge: When they take that vote, is there discussion too, or is it just a vote?

Belton: No, it's a discussion. I've never been there, but I'm told. This is like all the court's conferences. They're confidential, but I'm told that they can be quite vigorous, depending on the case. Some of them are easy, some of them are hard; some of them they're still not certain, and they will say, "I want to see what you're going to put out in writing; I really can't vote right now. I've still got problems."

But they try to reach a consensus. They try very hard to reach a unanimous opinion if possible; and if not, as large a plurality as possible, and to minimize the number of separate opinions if possible.

Both of the justices I worked for had the view--and I think a lot of them do on this court--that the United States Supreme Court is too fragmented and speaks with too many voices. The more important the case, the more likely this is to happen. Look at the Pentagon Papers case:¹ there were nine opinions. Everybody had a separate opinion. Now, that's absurd. Our court has never done anything like that. If we have one dissent, it's not uncommon, but we still have a lot of unanimous opinions. Sometimes you'll have one dissent or one concurrence, or maybe two concurring opinions, but the court tries as an institution to minimize the number of times that happens; whereas in the United States Supreme Court, the unanimous opinion is the rarest entity: there's usually going to be some prima donna who wants to put in his or her separate opinion and clutter up the books and splinter the court's effect, in my view. So we try not to do that.

They're even more rare in the Courts of Appeal, partly because the Courts of Appeal only have three judges on the case, so you can't split it many ways; and partly because they have so many cases to write, they don't have the time, the luxury, to write a separate opinion.

1. *New York Times Co. v. United States*, 403 U.S. 713 (1971).

In our court they do happen, of course. Justice Mosk is as responsible as anybody for that because these days we do write a lot of dissenting opinions, but we try to keep them short and courteous and as minimal in number as possible.

Drafting the Opinion

Belton: After the conference, the judge to whom the case is assigned for opinion goes back to his chambers and tells his staff member who worked on the case, "We have a majority. Convert this into an opinion, and we'll take it from there." The staff member takes a second look at the thing and prepares a draft opinion, which is based on the calendar memorandum, and it accommodates the justices' views expressed at the conference after oral argument, as far as possible.

For example, at conference, one of the justices may say, "I like it, but I think that discussion is too brief," or, "This part is too short," or, "That part is too long," or, "That part is inconsistent with another," or, "That's a problem for a case that I'm preparing," and so forth, and make a suggestion: "Can you take this out? Can you shorten that? Can you lengthen that? Can you add this, delete that? Can you expand this point?" and so forth. The justice to whom the case was assigned will make every effort to accommodate all that. That's the way it works. We try and accommodate everybody.

That is what gets done after oral argument: these accommodations and revisions in the light of all viewpoints. And there may be even revisions in light of what the parties argued in oral argument. Oral argument, in my view, doesn't often change the outcome, but sometimes it clarifies things. Sometimes people concede a point. That's what it's for, to permit the judges to ask questions and to permit the counsel to try and bring to bear some degree of persuasive powers. But you have to understand that you're not arguing to a jury, where persuasion is the great art form and can be very effective. Here you're talking to seven experienced jurists, who are not swayed by appeals to emotion and who are interested only in the legal questions and the ramifications. And so, oral argument has less of a persuasive function than it does in a jury argument, for example.

All these adjustments are made and passages are rewritten, and then there is the nuts and bolts work: you have to check all the citations, you have to check all the quotations, check all the references to the record, make sure all the facts are right and all the quotes are right, and then it gets sent to the Reporter of Decisions' Office, and the Reporter of Decisions' staff does their editing job on it. They will correct citation form, point out grammatical or syntactical mistakes, and make a lot of suggestions from an editor's point of view, much like what a copy editor would do.

LaBerge: Are the people who work there lawyers?

Belton: They don't have to be. The Reporter of Decisions is named Ed Jessen. And his staff--they are the assistant reporters. What, four or five? They are all legal editors, and some may be

lawyers. I don't know--some may not. You don't need to be. You just need to understand legal writing--good legal writing.

We do have a manual that they publish. We're about to come out with a new edition of it, in fact, next month [January 2000], which is a manual for all lawyers in the state to use, called the *California Style Manual*, which gives advice on style form, technique, and citation form for all opinion writing and legal writing in general. They're in charge of that whole field, which is very important for consistency, clarity, and accuracy. They're very careful.

Circulation of the Opinion: the Box.

Belton: Eventually, the draft opinion is satisfactory to the judge and it's satisfactory to the Reporter of Decisions. Then it is circulated to all the judges, and all the judges, then, have a certain amount of time to consider the case and to determine whether to sign the opinion or not. Now you are having an opinion circulating for signature, so you're in the final throes of the process.

To go back for the moment to the 1960s, the way it happened in those days, was that after oral argument and after the conference, which they still had, the judge to whom the case was assigned--let's say Justice Schauer--would circulate the opinion. It went around in a box which was--. Oh, there's one over there [pointing].

It's a large, heavy-duty cardboard container that contained the opinion, the briefs, and some of the documents in the case--maybe not the entire record, depending on the size of the case. If the record was modest, the whole record would go round. If it was not, it would be kept in storage and just the important parts of it would go round.

The box would circulate from judge to judge, and the judge would spend more or less time on it, depending on how much time he had available or how much time he needed, what other things he was doing, how long it took him to review this case. Some would sign the opinion within minutes of getting it. Others would sit on it for weeks. It would depend.

At that point, if the judge to whom it was circulated wanted to dissent, he would stop everything and write a dissenting opinion, which could take weeks. The box, therefore, didn't move, although any other judge who wanted to sign the case could call for the box. This is how it used to be done. It would be brought to him, he would sign, or would say, "I'm ready to sign." Most of them, though, upon learning that a dissenting opinion was being prepared, would wait to see what it says. But if you felt you knew what it was going to say because of some prior discussion--maybe the conference discussion--and you were not persuaded, you could sign it without a minority opinion, without waiting for the dissent. There's no requirement to wait.

If the dissent came out and was persuasive, you would call for the box, and a justice who had previously signed could strike his signature--remove his signature--and sign the dissent. And that happened, too. Sometimes it would go to Judge A and Judge B. They would both

sign it. Then it goes to Judge C, and he writes a dissent. Then Judge A decides, on second thought, "I like the dissent," so he would strike his signature from the proposed majority opinion and sign the dissent. By this process, it could happen from time to time that the dissent would pick up a majority. In which case, what happens? It gets reassigned again.

Late Reassignment

LaBerge: It gets reassigned.

Belton: That's right. It's a very late reassignment, but it happens, and that's fine. That's what it's supposed to be. That's what the game is all about. You're trying to achieve a majority view, or consensus view, so it would be reassigned to the dissenting author.

The dissenting author would then call in a staff attorney--the staff attorney who worked on the dissent--and say, "Congratulations. Let us now convert the dissent into the new majority opinion," so that's what would happen. This could take quite a bit of time, or little, depending, and the dissent would be converted into a majority opinion. Portions of the original majority opinion could be borrowed with the consent of the author of the majority opinion--let's say the statement of facts, which is perhaps not in dispute. So the dissenting justice would say to the original--the erstwhile--majority writer, "You mind if we base our statement of facts on yours?" And they'd say, "No. Fine. Go ahead. Why not? The work's done. Saves time."

LaBerge: Now did this ever happen to you?

Belton: Oh, yes. If you're around here long enough it happens both to you and for you. That is to say, there are cases where you write a dissent and it prevails and you feel great, and cases where you write a proposed majority opinion and you lose it after oral argument and you feel awful. In the long run, it's about six of one, half a dozen of the other, you know. Depends how long you work here. If you work here long enough, it happens to you and then it happens for you.

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Belton: You tend to put it behind you, and you forget about it. All you remember is the outcome. You don't remember how you got there because if you would brood about this, you'd never finish, you know? You can't take it personally. Sometimes you put your heart and soul into a majority--proposed majority--opinion and you lose it and you're really upset for a few days, but then you realize, That's the way the game is played. And maybe they're right, after all. You may not think so for a while, but you just put it behind you and go on to the next case.

What you do at that point is, if the case is taken away from you, the justice from whom the case is taken away will convert his proposed majority opinion into a dissent. And that can be fun. More likely what you do is you write a fresh dissenting opinion attacking the new majority, and that's a way you can vent your spleen: on the new majority. But there again, I hasten to add, if you read the dissenting opinions of this court over the years, you will find they are all--or a vast majority of them--very politely written and very calm and rational.

Collegiality and Courtesy

Belton: We've had one or two justices who wrote vigorous dissents. Jesse Carter comes to mind, who was a contemporary of Justice Schauer, but even his, when I look back on them, are very mild and polite compared to--I'm afraid I have to say it again--the United States Supreme Court.

Justice Mosk, for one, is appalled. And that's the right word. And I am too by the vitriol expressed in any number of opinions of the current and fairly recent past justices of the United States Supreme Court in dissenting opinions. They are so strongly worded. I don't know how these people can eat lunch together after that! I don't know how the institution survives as a collegial institution when they talk to each other in public like that. These are opinions that are going to be filed!

They basically say, "You moron, how could you believe that?" The worst offender is Antonin Scalia. Some of his dissenting opinions, I think, are just shameful. He's a very smart guy, but he just can't control his pen and his ego, and he thinks he's right all the time. When there are five votes that say he's not, he gets very upset, and he writes things that are in breathtakingly bad taste, in my opinion. There are two or three others there, but he's the worst offender.

You can write strongly worded things, like Thurgood Marshall used to write or William Brennan or, I hope, this court. You can write strongly worded dissents, but they can still be courteous, they can still be polite; they don't have to be arguments *ad hominem* as Scalia's and some of the others are, where they practically impugn their honesty, their probity, and almost their mother. It's just appalling.

Well, that's not our tradition. It never has been. Throughout all the years that I've been here, I've never seen that happen very often. It's very rare. Even the dissents that you think are strongly worded, when you compare them to the United States Supreme Court, they're pussy cats. There's just no comparison.

LaBerge: Now was this ever discussed, or did you just pick this up by osmosis--the fact that you're trying to be collegial, that you're trying to work it out?

Belton: No, it's just the way we've always done it. It's an institutional thing. Justice Mosk has told me --and, indeed, I think he's written in articles--about his dismay at the wording of United States Supreme Court dissents. That is a matter of public record. The record is plain; you just have to read a few of these things. But this court has never--that I know of--decided, "Hey, we're going to go easy on each other." It's just the way we've always done it. It's an institutional memory that everyone shares.

Final Stages in Production of Opinion

Belton: To finish up the sequence: What happens then is that after oral argument, the justice to whom the case was assigned for opinion circulates his opinion. In those days, in the box, it gets circulated around. Eventually, there are either seven signatures on it, or there are a total of seven between it and separate opinions. Everybody has taken a position, and there is nothing more to do.

At that point, the case is "filed." When you file a case, you are deciding it and publishing it at the same time. The decision is dated from the date of filing, which is a date that the clerk puts on it when the court orders--. The chief will order the case filed when it's clear that everybody has had their say, taken their position. When it's filed, then for the first time it becomes public.

Copies are given to the lawyers on both sides. Copies are made available to the public. You can buy copies of the court's opinions from the clerk's desk on the day they're filed or thereafter. They're open to the public. Copies are sent to the press. Nowadays copies are posted on our web site. We're so modern! [laughter] But of course, none of that happened in 1960.

Then, within a few weeks, it shows up in the advance sheets of the court, the official *California Reports*. It takes a few weeks to get into the reports because they have more editorial work to do, such as adding footnotes; but once they do that work, they print it in the public documents, and eventually it gets into the bound volumes and is there for ever and ever, Amen. That's the way it was done in 1960.

Changes in Procedure with Proposition 32, 1985

Belton: Much of that is still done the same way today, but there are a couple of differences. And I wonder if I should talk about them now, or wait until we get to that period in the chronology. What do you think?

LaBerge: Well, how much difference?

Belton: Not that much difference.

LaBerge: Why don't you do it now?

Belton: Yes, it'll round out our time.

LaBerge: And then we'll really start with Judge Schauer.

Belton: All right. Well, what happened was that in 1985 a proposition was put on the ballot--the statewide ballot--called Proposition 32, that proposed to make a major structural change in the

appellate court system in California. It proposed a few things. It was a result of years of input from lawyers and practitioners and judges. Quite a number of different opinions were expressed, but the basic idea was this: Before 1985, when the petition came in, it was called a petition for hearing. If it was granted, the Court of Appeal opinion was nullified. In fact, everything the Court of Appeal had done just disappeared completely.

LaBerge: Is this the same as depublishing?

Belton: Yes, well, it's an automatic "depub." It was just the consequence of the granting of a hearing. If the C.A. opinion had been published, it was removed from the books. But more importantly --that still happens--but more importantly in the pre-'85 days, what this court was doing in its opinion was reviewing the trial court's judgment. It was like an appeal *de novo*--a second appeal. You got one appeal to the Court of Appeal, and then if we took the case, you got a second appeal from the trial court judgment directly to this court. In our opinion we never talked about the Court of Appeal opinion. When we said at the end, "the judgment is affirmed or reversed," we meant the trial court's judgment is affirmed or reversed. Everything the Court of Appeal did disappeared.

Well, Court of Appeal judges didn't like that. They thought, "Hey, we put a lot of work in on some of these cases and we'd like it to be given some consideration." They had on their side the federal system, because in the federal system it doesn't work that way. In the federal system, when you appeal, when you go from the district court, you appeal to the federal circuit court. When you go to the United States Supreme Court, on petition for *certiorari*, when they grant review--grant cert.--they are reviewing the intermediate appellate court's opinion; they're not reviewing the trial court; they just go back as far as the intermediate court, the Court of Appeals. When the [United States] Supreme Court says "we affirm or reverse," they're talking about affirming or reversing the circuit Court of Appeals. So our C.A. judges said, "Let's have that system in California."

I was of two minds. My theory was the old one: "If it ain't broke, don't fix it." I didn't think it was worth making such a major change at the time, and I argued against it, but in vain. We don't need to go into the details, but the court appointed a blue ribbon commission to review this process and to consider the proposal and to prepare a proposition for the ballot. It took a constitutional amendment because this was changing the jurisdiction of the court. That had to go onto the ballot, in order to amend the California Constitution.

The public, of course, neither knew nor cared anything about it, and it passed overwhelmingly because it got only the no votes of people who vote no on everything, and there are always a certain percentage of those. But it was totally non-controversial. It was sold to the public as sort of a technical adjustment of the court system, with a view to making it more efficient and so forth. I didn't think any of the arguments held much water, but the voters probably didn't care and so it passed. Once it got on the ballot, it was guaranteed to pass. It was one of those things.

In 1985, then, everything changed and this proposition took effect, making us follow the federal system. That is, now when this court takes a case, it reviews the Court of Appeal opinion rather than the trial court judgment. They also changed a few terms, too. We no longer

call it a "petition for hearing," but as of 1985, we call it a "petition for review." That was the first big change in the process.

The second big change occurred a few years later when the court--. Gosh, this is really a longer story if we want to go into detail.

LaBerge: Okay. Do you want to stop here and do it next time?

Belton: Yes, I think that'll do better.

LaBerge: Tell me the name of the story so I'll remember to ask you.

Belton: The 90-day rule.

LaBerge: I know Justice Mosk talked about that.

Belton: Yes.

LaBerge: So I'll look at that to start with.

Belton: I'll give you the dirt.

LaBerge: Okay, great. We'll start with that next time.

The 90-Day Rule

[Interview 6: February 1, 2000] ##

LaBerge: When we finished last time, you were telling me about the whole process of a case arriving and going through the court, and you had one piece to finish and that was the 90-day rule.

Belton: Okay. It's getting, of course, a little out of sequence because it happened long after I was here, but we might as well continue with this technical talk and then we can get back to the personal stuff later. Let's see, can I get into this drawer? Stop the machine. I need to get the Constitution. [tape interruption] I don't know how technical you want me to get on this 90-day rule. I'll try to keep it moderately non-technical.

I had described to you, I think, how a case progresses through the court--in those days--by petition for hearing, followed by the granting of hearing and the drafting of a calendar memorandum for circulation, followed by oral argument and the circulation of the opinion after oral argument.

The one thing that was distinctive about the Supreme Court practice was that there was basically no time limit on the court for circulating an opinion after oral argument. In effect, there was no time limit. The Constitution provided then, as it does now, that--and I shall quote

here--"A judge may not receive the salary for his judicial office while any cause before the judge remains pending and undetermined for 90 days after it has been submitted for decision." That was enacted a long time ago. The general idea was to give judges an incentive to decide the cases that are submitted to them. They had 90 days, and if they didn't do it in 90 days, their salary was suspended; they didn't get paid until they got caught up.

The gravest offenders were trial judges. There were a lot of trial judges who, for one reason or another, got way behind in deciding factual and legal questions that had been submitted to them. Cases would drag out in the courts for years while the judges took their time about that.

In the federal courts, there is no such requirement that I know of, and cases tend to take a long time. California decided to try and deal with this by this process of putting in an incentive--the carrot or stick, depending on how you look at it--on the judges for them to decide their cases promptly.

Well, although it says "a judge of a court of record," there are lots of courts of record in California. The trial courts are courts of record, but so also are the appellate courts. So the question arose, Does this constitutional provision apply to the appellate courts? And this court, our court, said, "Yes, it does, but it applies to the Courts of Appeal, not to the Supreme Court."

As you notice, it says, "remains pending and undetermined for 90 days after it has been submitted for decision." That's the key question: When is a case "submitted for decision"? Because that's what starts the 90 days running. In the Courts of Appeal, we said the case is submitted for decision when the parties sit down after making their oral argument. They stand up, they argue, they sit down, and at that point, the case is automatically submitted for decision. Or if the parties waive oral argument, whenever that occurs.

But in our court, we didn't consider that the oral argument was the submission. Instead--. I'm almost embarrassed to say the way we did this. It was unanimously done by the court for a long time. The court said, "It's submitted when we say it's submitted by filing an order saying, 'The above-entitled cause is submitted for decision,'"--a one-line order which the Chief Justice would sign--as all one-line orders are signed by the chief--and he or she would sign this order when the case was ready to be filed. In other words, if it took 90 days, fine. But if it took 180 days, so be it, and they wouldn't file the order of submission until the 180th day. When the order of submission was filed, they went ahead and filed the opinion the next day or the same day. Then they could say, "Well, we never violated the 90-day rule because the time isn't running until we say it starts running." This was, of course, a subterfuge to give the court leeway and time in which to decide its cases.

This went on for years--decades--and everybody knew it. They just thought it was a quirk of Supreme Court jurisprudence. The parties got used to it, and all the lawyers knew it pretty well. They said to their clients, "Well, in the Court of Appeal, you get a decision within 90 days after argument. But with the Supreme Court, it's a crap shoot: it could be 90 days, it could be a year or two. We can't tell you." Of course, their clients would ask them, "When am I going to hear from the Supreme Court?" The answer was, "I don't know. No one knows."

Lawsuit Brings Change of Procedure

Belton: This went on merrily for years and years, until one day the court outdid itself with a case that was orally argued and the order of submission and the opinion didn't get filed for--I don't know--a year and a half or something like that. I forget the exact number of months; it was a long time. That in itself wouldn't have been unusual. The reason it was a long time was a common reason--and it still can be--and that is, the court had great difficulty deciding the case.

It was orally argued. The court took a tentative vote after argument, as it always does, and it appeared that it was going to go a certain way, with a certain split of opinion. That means a split in the court, with some judges voting for that resolution and others voting for the opposite. Then months passed, and the proposed opinion circulated and it did not draw a majority; so it was reassigned to another judge and he had to start over from scratch and that took more time. You don't orally argue the case a second time, but you wind up writing all these opinions in sequence, and it all took a long time. I know it's not because the court was just doing nothing or was out on the golf course; it's that it was a difficult case that caused the court to change its mind a couple of times.

LaBerge: What case was it?

Belton: I don't remember that. I was afraid you'd ask me. It's in the bound volumes. I don't think I could find it because that was the only distinguishing feature about the case. I would have had to have made a note at the time, which I didn't, because I didn't know you were going to come along and ask me this question years later. [laughter]

LaBerge: If it comes to your mind later, you can stick it in.

Belton: It's not likely because it wasn't a very unusual case. There are close cases; that's why we take them. Ordinarily, as I say, nothing would have followed from the delay, but in that case, the client--the party, not the lawyer--the client got very upset about the delay and demanded to know what was going on and why this was happening. And worse yet--now a little bit is coming back to me--the client was at the oral argument and inferred from the court's questions, which is always somewhat speculative, that he was going to win.

And he was going to win at first, but then the majority switched after oral argument and he wound up losing. So not only did he have to wait a long time, but to add insult to injury he wound up losing. He was really upset. He couldn't understand why it took so long, especially when he thought he was going to win. He thought he had an easy case, but, of course, clients always do. So he went and complained to anybody who would listen to him. He complained to his lawyer; his lawyer said, "Nothing we can do." I guess he complained to the State Bar, I don't remember. He certainly complained to everybody who'd listen to him. He was a somewhat litigious type anyway, and just the wrong person to rub the wrong way on this question.

Eventually he filed a lawsuit against the court. It was explained to him at length what I just explained to you, that the court submits the case when it decides to submit it, and therefore

it complies with the 90-day rule in the letter, but not the spirit. But he filed a law suit anyway against the court in the Superior Court of San Francisco.

It came before Judge Maxine Chesney, who has since got a new last name. I guess she married. I'm pretty sure at that time she was just Chesney. She was always--still is--a pretty feisty, independent lady. She looked at the matter and didn't see any reason why we should treat ourselves so well. She heard arguments. The court was represented by the Attorney General, who represents the court whenever there's any similar lawsuit, which is pretty rare. I forget who represented the other side, but all the viewpoints were aired and explained, and she thought the whole thing was pretty high-handed and unfair; she didn't see why the Courts of Appeal should have no time other than the 90 days, and we have all the time in the world. She began inclining towards granting an injunction against us of some sort.

Nobody quite knew what remedies were available because this had never happened before. Nobody had ever sued a court to make it obey the law. It was pretty unusual. We were following all this with great interest, as you can imagine.

LaBerge: Right. [laughter]

Belton: I don't think they went so far as to depose any of the judges like they did in the Tanner case, but there's no secret as to how we operate, so she didn't need to take evidence. It was really a pure question of law. And it looked bad.

It looked like we were going to lose. We began speculating, "Well, then what happens? Let's assume we lose and we appeal. We appeal to where? The Supreme Court appealing to the Court of Appeal? Does that make sense? Worse yet, what happens after the Court of Appeal upholds her, as it probably would? Do we appeal then to ourselves?" Obviously this is getting more and more nutty.

So the court asked me to look into this, and I said, "Okay." They asked me to come and report to the court in one of the regular conferences. I was ushered in and there they all were. I said, "I'm afraid I have bad news, but don't blame the bearer of bad news. The bad news is I think we're going to lose." I read the pleadings and the arguments--the written briefs that had been filed in the superior court--and it did not look good. I told the judges that, and they looked grim-faced but thoughtful.

They thought they could work out something, and they proceeded to negotiate. That was all my role in the matter, just telling them what I thought the outcome was going to be. They got together with the Attorney General and counsel and worked out a compromise by which they settled the case. I think they settled it before there was a judgment; I'm not sure, but I think so--just to stop this process because it had got too far along and too much publicity. They said, "Okay, okay, you're right. We'll do it. We will deem the matter submitted when oral argument occurs, as the Courts of Appeal have always done, and we will figure out some way to solve the problem of the difficult case--the reassignment and all of that." That settled it as far as the lawsuit was concerned.

Front Loading

Belton: But that brought up the whole question of, Now what do we do? Now we've only got 90 days, and our work is different from the Courts of Appeal for two main reasons. One, the cases they take--a large number of them--are easier than the ones we take, because they have to take everything. Most of their cases are pretty routine and not complicated--single-issue, sufficiency of the evidence kind of questions; easy to deal with. Our cases are all much more difficult because we choose them. We take only the difficult ones. We don't take the easy ones; the Courts of Appeal do fine with those. We take the difficult ones, the close questions, the case where there's a conflict of opinion between different Courts of Appeal. So to start with, our cases are, by definition, more complicated, more challenging, and more likely to result in a division of the court.

The other reason is simple mathematics: The C.A. has to get only two people to agree because two out of three will make a decision. We have to get four out of seven to agree. Obviously, there's going to be different viewpoints since we have bigger staffs and more input, more views that are proposed. It takes longer to get four out of seven to agree--and hopefully seven out of seven, because we try and achieve unanimity if possible--so the same 90 days seems a lot shorter for us than it does for the Courts of Appeal.

In most cases they don't have any trouble. For instance, dissenting opinions are quite rare in the Courts of Appeal. I haven't seen the figures, but I'll bet it's just a few percent. In our court, it's much more common. I haven't seen the figures, but I would guess it's more like a quarter to a third of our cases have some kind of separate opinion--concurring or dissenting. That's reflective of the points I just made. So the Courts of Appeal can usually sail through, and I'm sure they get rid of their cases long before the 90-day period expires; but in our court, that could be a problem.

That's when we sat down and we invented a totally new procedure called front loading. That's a procedure that was largely--I will give credit--the impetus of Justice David Eagleson, who was a justice of this court in the 1980s. I think he was a former administrator in the lower courts, and particularly in the superior court, so he had good administrative skills. He said, "There's got to be an administrative way to solve this problem."

He proposed that we just move the negotiating process frontwards--well, in a sense backwards, towards the front of the process, rather than the end. We'd move it up to the beginning of the process, so we'd load it all in the front. In other words, the period between the granting of review and the oral argument is when we do all this negotiating, rather than after oral argument, when the 90 days are running. We save that 90-day period for final adjustments, final agreements, proofreading, cite-checking, the polishing, the things you need to do in any case. But the difficult problems of working out who agrees with what and on what theory, you do before oral argument.

Preliminary Responses

Belton: The way it works is the court invented a process called preliminary responses. There's no absolute time limit for circulating a calendar memo after review is granted. The court tries to do it in a formal time limit imposed on itself--tries to do it in six months or less. That's usually difficult, but that delay is not our fault. The reason it's not our fault is, during that period the parties are entitled under the rules to file briefs in this court. Those briefs, called briefs on the merits, are theoretically supposed to be filed in 30 days, 30 days, and 20 days--a total of 80.

In fact, in many cases they ask for and get extensions of that time because they are very busy lawyers and they've got many other obligations. They have to make a showing of good cause, but it's not uncommon. We tend to grant them one or two extensions; so the briefing process after the grant of review usually takes, in fact, more like five, six months, and maybe longer, rather than two and a half. During that period, of course, we can't really get started on the case because we have to see what the briefs say, although sometimes in desperation we will start without having all the briefs in. Maybe we'll have the opening brief and the responding brief, but not the reply brief. In other words, it's a three-round process, but we will sometimes start with what we've got after two rounds, and then when the final brief comes in, we incorporate it into our analysis.

When the briefs are finally in, the calendar memo gets written in whatever time it takes, and that again is a function of how complicated the case is and how helpful the briefs are. There are cases, frankly, where the briefs are not a lot of help, for one reason or another, and then we have to do a lot of research on our own. We pretty well have to check everything that the briefs say anyway. You can't just simply rely on the brief's assertion as to a question of fact about what happened in the trial or even what the cases stand for and hold or what statutes say. You have to check it all because for one reason or another--intentionally or more likely unintentionally--counsel sometimes mischaracterize what the facts below were or what a case holds or what the facts of that case are, so all this has to be checked and then integrated into the calendar memo being written, which is like a draft opinion.

That was always the case. What's new in the front-loading system is that in the old days the calendar memo would get circulated and the case would be set promptly for oral argument. The moment the calendar memo was circulated, the case would be set for oral argument, and any negotiating or dissenting and all that took place after oral argument. Now we had decided we couldn't do that any more, so we had to do it all beforehand. Well, how do you do it?

An idea was proposed and it has worked out quite well: the so-called preliminary responses. What happens is, the author circulates the calendar memo and the other six judges reply by what are called preliminary responses, which are short memoranda somewhere between two and four pages, on the average, in which they explain what it is that they think about the calendar memorandum. If they agree with it straight out without any problems, they just check a little box saying, "I agree," and that's nice. They're offered various options: you can agree, you can agree with reservations--and then you state what the reservations are--or you can disagree, or you can disagree and intend to dissent, or you can say just, "I'm doubtful," if

you're not sure. So they give the judges various options. These preliminary responses--or PRs, as they're called--are supposed to come back in two weeks. Unfortunately, they sometimes take longer and can drag out for some extra weeks, but eventually they all come back. Then the author will look at the preliminary responses and reconsider the calendar memorandum in light of the preliminary responses.

It may be that a few changes will satisfy the other judges. A preliminary response might say, for instance, "I agree, but I think that this point should be expanded along the following lines," or, "I agree, but I think that that point is unnecessary to the discussion and should be dropped." Or, "I think we should talk about the Case A," or, "We should distinguish Case B," or, "We should overrule Case C." Or, "I've come across another statute or case that may be relevant." Anything that you can think of that could go into the opinion-writing process can happen that way. Basically, you get seven minds instead of just one. Actually, you get more than seven, because--

Adjustments in Calendar Memorandum

LaBerge: I was going to ask--

Belton: Well, when the calendar memos come out, each judge assigns some other judge's calendar memorandum to one of his staff for the first look at it; and that staff person drafts a preliminary response, which then the judge in question will work on and make his or hers and proceed to put out the final product.

Sometimes all it takes is some minor adjustments in the calendar memo, but other things can happen too. If somebody is determined to disagree, there's nothing that you could say because they just disagree with the result. At that point, they can say, "I intend to write a dissent," and they can circulate a dissenting calendar memorandum, which is like a preliminary view of the dissent. That will circulate; and when that circulates, all the other judges are required to file preliminary responses to it, basically asking, "Do you agree with the dissenting calendar memorandum, or do you still agree with the original calendar memorandum?" You have to choose, and say why.

So the judges sign and take sides and you can have a case that gets reassigned at that point; where the calendar memorandum, no matter what you do to it, is not going to get four votes. Then the case gets reassigned and that person gets to write a new calendar memorandum. Or, if it's not quite that drastic, but if the calendar memorandum requires a lot of work, the original author can prepare instead something called a revised calendar memorandum, which supersedes the first one. It takes into account a lot of the suggestions made in the PR and then says, in effect, "Here. Do you like this any better?" And you can have a second revised, and sometimes even a third revised, calendar memorandum. At some point, you can always stop and say, "I think it should be reassigned," and it gets reassigned.

That's how the front-loading process works: by the time you come to oral argument, the court pretty well has chosen sides. The court knows all the facts, it knows all the issues, it knows the law that bears on these issues, and it has pretty well lined up in some kind of voting alignment--whether it's 7-0 or 6-1 or 4-3, whatever. At that point, there are pretty firm positions taken as to how the case is going to be resolved: what outcome and on what theories. There can still be a few loose ends, depending on how urgent it is to get the case on calendar, but we try and minimize those because we know the 90-day clock starts running the moment oral argument is held.

Now, what you can see, when you think about it for a moment, is what we've really done is just shifted this process to an earlier time. So as far as the lawyers and the parties are concerned, the total amount of time may still be the same; but there's no way around that, for the reasons I gave you earlier. You've got seven people and you've got difficult cases. There's no way to do it more quickly. We're not embarrassed by how long, on the average, our cases take. The United States Supreme Court takes just as long, and I think probably most of the other state Supreme Courts do--at least states that are of comparable complexity to ours. We do the best we can. There are critics out there, like Professor [Stephen] Barnett in Berkeley.

LaBerge: Right. I've heard.

Belton: Who every year carps that our opinions are too long and we don't write enough of them and they take too long to get out. He has a point, up to a point. I think he goes too far. I would like them to be shorter and snappier. They used to be, when I first came on the court. If you look in the bound volumes, you'll see. Over the years, for a variety of institutional reasons, they've tended to become more complex; but I think, in part, the issues are more complex.

In the early days, things were really pretty simple--a single issue, a simple question of tort law or contract law--but nowadays, you get these very complicated questions of insurance law and tax law and eminent domain and this and that, and these are very complicated fields. They have elaborate statutes that come to bear on them, and there have been many more Court of Appeal opinions over the years. So these cases--some of them anyway, maybe a lot of them--are necessarily more complicated and take longer to work out. That's what we're here for; so, as I say, I don't feel particularly embarrassed by our work product. Considering all the challenges facing the court, I think it does quite well. That's the 90-day rule.

Now when the clock does start running after oral argument, you'd better not have too many things yet to work out because it can be pretty tight, and the case can get right down to the wire sometimes. We try to file them by the eightieth day, if not sooner. Sometimes we're able to file them by the sixtieth day.

But there are things that still have to be done. The opinion has to be cite-checked and proofread, everybody has to make sure they're happy with every aspect of it, and there are certain inevitable time constraints that have to be met. But when it gets down to the wire and you're getting into the eighties, towards the ninetieth day, then pressure is brought to bear to get everybody to sign up and get the thing out, so nobody loses their lunch money.

LaBerge: Has it happened that somebody totally changed their opinion after oral argument?

Belton: It can happen.

Purpose of Oral Argument.

LaBerge: Not the written opinion, but their own opinion--a change of mind?

Belton: Yes, sure. What you're touching on is a question you might well ask. You might well ask, What, then, is the point of oral argument? It's a good question.

LaBerge: I would feel, as the counsel, like, What's the point? Why bother?

Belton: That's right. That's a good point, and it's something we should talk about. Oral argument has never been as important to the court as it has been to counsel. Never. Even in the old days. Again, for a variety of reasons. One is that a lot of the work that we do is very intellectual work. It requires an analysis of facts, of cases, of statutes; and oratory doesn't help. It's not as if you're talking to a jury, where you want to persuade them to a certain view of the facts. The facts are usually not the problem in our cases. The questions are legal ones. That's what we're here for. So, whereas oratory to a jury is an important moment--the summation to the jury--a very important moment--and I'm sure is jealously guarded by all practitioners, and it should--

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LaBerge: I'm sorry, the tape went off when you were saying how the summation should be jealously guarded.

Belton: All right. [It's] important to the jury at the trial level. But at the appellate level, it's of less importance. The main purpose it serves is to clarify--to give the lawyers the opportunity to clarify their position on the legal questions and to give the judges the opportunity to ask questions. Otherwise, when the briefs come in, we can't write to them or e-mail them and say, "What do you mean on page seven when you said this and that?" It's up to the other counsel to point out ambiguities in the briefs; we're just passive readers at that point. We don't engage in dialogue with them, so oral argument is the court's only opportunity. And in close cases, it can have an effect.

It's not often that it will change the outcome of the case, but people might sometimes concede a point in oral argument. That's happened. Sometimes they shouldn't, but they do, and they don't know that they don't need to. Sometimes a judge will be unclear about counsel's position, and counsel will make it clearer.

Unfortunately, sometimes the opposite occurs: counsel will make it worse because sometimes counsel are better at writing than at talking. In fact, most of them are. The art of standing on your feet and talking and giving an expository statement to a big group like the court is a lost art in this country. Nobody does rhetorics any more and public speaking, and many of the counsel are not particularly persuasive. Sometimes they just wittingly, or unwittingly, make it even more complicated than it is, and so it doesn't help much.

But it's an opportunity that this court realizes is important to counsel and to the public. It's the one moment when we appear in public. Otherwise, we're always behind the scene. Like the old man at the end of the *Wizard of Oz*, we're behind the curtains, so you don't know what's back there. The only time the court ever appears, other than ceremonies and things like that, is when we have oral argument; so if we don't appear then, we'll never appear, and that's not good relations with the public. So this is an important event, and it takes a lot of the court's time. Every case gets an hour of oral argument. Automatic appeals in death penalty cases get an hour and a half. So it's one week a month that's basically gone--devoted to this function. That's a lot of time. Well, a good part of a week. That's a lot of time.

Now the Courts of Appeal have a very different attitude. They don't want to hear oral argument because they don't have time. They're putting out far more opinions per judge than we are. They have such a high production level, necessarily, that every minute that's lost to the writing of an opinion is a waste. The result is that they try to persuade counsel not to orally argue, but rather to waive oral argument. They all do it--all the Courts of Appeal. And they get a lot of waivers. Again, I haven't seen their figures, but I'll bet more than half of their cases waive oral argument.

They do it by various devices. One is, they'll have a presumption that you don't get argument unless you demand it. Another one is, they'll send out letters saying, "The court is fully apprised of the facts of this case, understands all the issues, and doesn't need oral argument. Now, do you want it anyway?" Counsel are intimidated by this. I'm not saying this is good or bad, and I'd probably do the same if I were on a Court of Appeal, but it is a clear effort to discourage oral argument at the Court of Appeal level just because of time constraints; whereas our court encourages it and has pretty well guaranteed it as a right in all cases.

But to get back to your original question: Does it make a difference? Again, not as often as counsel would like. Counsel probably know that, but for them, it's an important moment: their clients may be in the audience, and it may be the only opportunity that some counsel will get to ever appear at this level of the judicial system. For example, in a lot of criminal cases, counsel is court-appointed. If the case arose in a small county, it can be just a local trial practitioner who took the case on appeal, on an appointment to the Court of Appeal. That's where the Court of Appeal finds its lawyers for court appointment--the local bar. Then, if we grant review, in those rare cases that come from that source, we usually ask the same lawyer to stay on the case, except we pay them instead of the Court of Appeal paying them.

Of course, they're delighted. This is their moment in the sun. These people who never stray out of Del Norte County or Calaveras County all of a sudden get to come to the big city and argue before the Supreme Court. It's a big event. Probably all their wives and family and relatives come too. That's fine. That's, again, more of a question of relations with the community--in this case, the legal community. The court tries to put on a human face and open its doors to all members of the bar, and this is one way that that occurs.

So it does, in some instances, make a change. More likely, it'll just confirm people's views and elucidate complications that had not been clearly understood before.

Orientation to Staff Attorney Position with Justice Schauer

LaBerge: Well, shall we get back to Justice Schauer?

Belton: I guess that's really all I need to say at this point about--

LaBerge: Unless you think of something else. Has there been any criticisms since this new 90-day rule took effect?

Belton: No. Counsel think they're getting a bargain, but of course the total amount of time is about the same.

LaBerge: When you first came, did somebody give you an orientation? Did someone train you how to do your job here?

Belton: No, not really. I think I've told you already how I got the job through the University of California at Berkeley Boalt Law School placement service. I had no idea what the job entailed, so I had no idea if I wanted to do it for more than one year anyway. The one-year arrangement was perfect. Judge Schauer didn't know anything about me; I didn't know anything about him. This was like a probation period, testing to see if we both liked each other and the job.

LaBerge: Did you have to show some of your writing or anything like that?

Belton: I don't think so. I think he just did it on my resume. You know, two Harvard degrees was obviously a big help.

LaBerge: Right. [laughter]

Belton: Plus a year of teaching at Boalt. I don't remember where he went to law school. What I was going to ask [California Supreme Court Librarian] Michael Ginsborg was how old Judge Schauer was when I joined him. He was clearly in the twilight of his career. He joined the court in--what was it, 1942? Whatever it says in the court's blue book. You've got it there?

LaBerge: Yes.

Belton: Let me take a quick look. It might refresh my memory. Yes, December '42. In those days, you didn't join the court until you were a man of some maturity and experience. I think he was born in the first decade of the century, so he would have been--. He might have been born in the last century, but that's easy enough to determine. But he was clearly a man of many years' experience at that point, and had a long career in the law. He was a practitioner, then he was a superior court judge for many years and a very good one. Then he was briefly on the Court of Appeal, and then was appointed to the Supreme Court in December of '42.

That would have been by Governor Culbert Olson, even though Judge Schauer was a Republican. He served until September of '64. So when I joined him in the first of June, 1960, he was just four years away from the end of his career, which had been long and distinguished.

Justice Schauer, the Pilot

Belton: I didn't know much about him. I didn't know much about California. Remember, I'd only been here a year. I didn't know much about the court at the time, but when I told my colleagues at Boalt Hall whom I was going to work for, they all said, "Well, he's a very distinguished, learned jurist, and you'll enjoy working with him," which I did. He can be summed up in one word: he was a gentleman. He was a gentleman of the "old school." He was very dignified, soft-spoken. Of course, by that time he'd slowed down, and he was a little on the portly side. And a very solid citizen. But he'd had an interesting hobby all his life. Indeed, when I first met him and all the years I was working for him he still practiced this hobby and that was, he was one of California's pioneer pilots.

LaBerge: Really!

Belton: Back in the twenties when flying was a very rare event, in the days of Curtiss and early aviators like that in California. He was one of the people who got interested very early on. He was a young lawyer and thought that he wanted to try it, and he became totally devoted to general aviation, as it's called. He spent his whole life doing it. He always had planes, and he always flew them.

He and a group of similar enthusiasts had a place up in the San Juan Islands, off Seattle. It was an island which had an irregular boat service, but it had an air strip, and they would all fly in from all over the Western United States to have sort of a pow-wow and spend time together. Maybe they just stood around drinking beer, but the point is, they also talked shop. They talked about planes and they looked at each other's planes. It was their fly-in kind of thing. Every summer he would go up and do that.

He continued to do this into his seventies. He explained to me that the older you get, the more often you have to be tested to keep your license up, but you're allowed to continue flying. You can fly into your nineties. There's no limit--upper limit--just as there's not with driving. But like with driving a car, you get tested more often. And I guess your insurance goes up and so forth. But he was devoted to it. He never had an accident, and flying into the San Juan Islands at times--it's very foggy up there. There are times when they couldn't do it at all. There were other times when they could, but it was more seat-of-your-pants flying than anything, and he never had a problem.

He spent years trying to get me to go up with him--better yet, to fly myself, despite my disability. He explained, "You know, you don't need to use your feet; you can use your hands for everything, and we'll get you in the plane. Why don't you come with me and you'll see how easy it is." I never took him up on it, because I was a young husband with children at that point; I had obligations. But in retrospect, I regret that I didn't, because I've always been interested in it. I've had a couple of flying experiences since, where I was not the pilot but the passenger, and I thought that it was marvelous. I regret that I didn't take him up on it, because he would have been delighted to take me.

I think it would have been harder than he realized just to get me in and out of a small plane. You had to climb up on the wing. Oh, maybe a fork lift would have done it; it would have been difficult, but it would have been fun.

The Jurist

Belton: Now as far as the legal matters were concerned, he was a real craftsman. He had, as I say, been on the court 18 years by the time I joined him, so he had written many, many opinions. They were all very highly structured and very well crafted. He cared very deeply about language, about accuracy, and words. We really got along on things like that. His philosophy, of course, was more conservative than mine, but that's fine. He was very open-minded and would listen.

LaBerge: You were talking last time about how involved different justices get in either the conference memo or the calendar memo. How involved did he get?

Belton: I would say average, in the sense that he let you do the first draft, and then he would go over it with you and ask for changes or make them himself. Fairly average in that regard. But because I was new on the job, I had to get guidance much more frequently. To start with, in those days--as I think I've mentioned already--there was no central staff, so we had to do all the conference memos ourselves. Admittedly, there were less of them, but there were still three or four per judge, per week. And the junior member of the staff always got stuck with them.

So for the first year, and maybe the second and part of the third, I did more conference memos than anything else. That was just the way it worked out on all the staffs. With conference memos, you don't have as much opportunity, or as much need, to confer with the judge because they're so short and simple that you just lay out what the facts and the contentions are; and they're brief. So I didn't have as much opportunity to work with him as I would have liked at first, but then that evolved.

Second Year as Annual Law Clerk, 1961-1962

Belton: I have to tell you how come I'm still here if I was an annual law clerk. Well, because at the end of the year, he came into my office and he said, "Peter, how would you like to be my annual law clerk again next year? [laughter] I think we do get along very well, and I'd like you to stay on, if that would be all right with you. I'm sorry about the uncertainty," but that's the way this court was structured at that time. The budget was set up for an annual law clerk and not a permanent one.

By then, I'd enjoyed it so much, and I could see where the job could lead because I could see what the senior people were doing, so I thought I'd stay on. I had intimations that the number two person on the staff might not in fact stay on, so there was a possibility of my moving up into that permanent position. I realized this is something I might enjoy doing on a

longer term. Again, I had no idea I was going to be here for 40 years, but give it two years anyway, right?

At some point--I'm afraid I can't remember when this happened--I did become the number two person. Mary Jane Ellis was the previous number two, and she retired a little early. It must have been in my second year because I know two law clerks that came later for one year, and I would have had to have been in the number two position to make an opening--an opening for the annuals. I know two annuals--one of whom I'm still very close to, and the other I recall quite clearly to mind; so I guess it must have been in the second year, or between the second or third year, that the opportunity came to move into the permanent position. He offered it to me because by then we'd gotten to know each other very well and we got along well.

I consulted with my wife and colleagues and decided this was a good career move. Again, I had no idea how long I'd be here or, indeed, how long he'd be here because I knew how old he was. As you know, you don't have any guaranteed job security when your judge retires, so there was always a possibility that in a few years, whenever it would be, he would retire and I would be cut loose. But we all face that possibility. There wasn't anything particularly different in my case. So I said, "Well, let's give it a shot and see how long we can run this," because I really was liking it.

Because I moved up into the second position, I got to do a lot less conference memos and a lot more calendar memos and more work of more importance and complication and interest and challenge. That was fine, and I began settling in by the second year, and certainly by the third year. Then in the third year, we had an opening for the annual law clerk, and we hired a fellow with whom I'm still very close after all these years. In fact, he's my estate planning attorney.

Other Law Clerks

LaBerge: Oh, what's his name?

Belton: His name is J. Ronald Hershberger. Ron Hershberger was born and raised in Oregon. He graduated from the law school up in Willamette. He came to California to make his career, although, as I say, he was raised in Oregon. I think he was born in Klamath Falls. Anyway, he came to California to make his career.

We would hire out-of-state attorneys just as much as in-state attorneys, if they had a good record and they interviewed well and so forth--and he did. Our theory was that the difference between Oregon law and California law is not great, and you can learn those differences. After all, I was an out-of-state attorney.

LaBerge: That's right.

Belton: You have to be a member of the California bar, which I had taken and passed, and so had he. But beyond that, we didn't have any compunction. He seemed quiet, reserved, distinguished, and quietly charming; and so we said, "Yes, let's take him on."

Ron served with us for one year. He left the court after the one year because that really was a one-year position. He went to practice in Palo Alto, where he has been ever since. So that has been a long time too. That's 39 years--whatever it is, 38 years--and he's now a senior partner in a distinguished Palo Alto law firm.¹ He specializes in estate planning and matters of that nature.

In fact, when my mother died a few years ago, I was the executor, and I retained him to be counsel to the executor; because even if you're a lawyer, you need a lot of help being executor because it's all so very specialized work. He was my attorney, and we negotiated all those pitfalls very smoothly. I've used him for other similar things in my family, recommended him to my friends, and we stay in touch.

Then in the fourth year, there was another annual law clerk. His name was Bob Tyler, and he practices in Fresno.

LaBerge: It sounds like you had some input in the hiring.

Belton: Yes. There were only three of us. The judge would always--that was true for Justice Mosk, too--the judge would always consult with the staff: "What do you think? You're going to have to work with this person." He would say, "You know, you're closer to them in age, maybe a better judge of their personality and their background. What do you think?" Anyway, in the third and fourth years, I finally got to do some work on some calendar memos and write some matters of more importance.

But you have to bear in mind, in those days, Justice Schauer was in the position that Justice Mosk is today: he was often in the minority because he was from an earlier time and more conservative. The court had evolved in those days, and we had people like Roger Traynor, Ray[mond] Peters, and Phil Gibson on the court; and although it wasn't unbalanced in a liberal direction, it was pretty much a four to three, or five to two, liberal majority in any case where that made a difference. In a lot of cases, it didn't make a difference. That's true today too; but if it did make a difference, we found ourselves on the dissenting end quite often. So if you asked me what landmark cases I worked on--and I have a feeling you were thinking about that--

LaBerge: Yes, that's the next--

Belton: I knew you were going to ask me that.

LaBerge: You know what to tell me, so I hardly have to say anything!

Belton: Well, the answer is none because we didn't get to write anything major.

1. Thoits, Lehman, Love & Hershberger.

LaBerge: I think you were dissenting.

Belton: We were on the dissenting end of the mix.

LaBerge: Well, possibly, that wasn't what your opinion was. Like you said, you were more liberal.

Belton: Yes.

Subordination of Personal Opinion

LaBerge: How do you do that when that's not where you--

Belton: Oh, we all learn to do that. We all learn to-- I mean, in a sense, we're just hired guns. Our job is not to express our views, but to express our judge's views, and to express them as forcefully and as persuasively as we can. You can't help having an attitude, and especially in a case that involves some emotional matter--you know, child custody or death penalty or things like that. There are a lot of cases that are, but it's hard to get emotional about an insurance case or tax cases.

So in those, it doesn't make a difference. But in the few cases where philosophy does matter--and it's a lot fewer than the public understands--the public and the press-- I can't express this strongly enough: the public and the press are convinced that it's all a question of philosophy and bias and attitude. Look what's going on in the presidential campaign right now [February 2000]. The hapless Republican candidates keep being asked, "Well, will you appoint someone to the [United States] Supreme Court who's in favor of abortion or against abortion?" For some of the candidates--I hate to say it--like Gary Bauer, that's almost the only question.

LaBerge: That's right.

Belton: It's one issue, but they don't understand it's a false issue because in most cases it doesn't matter. True, *Roe v. Wade*¹ is perhaps on thin ice. A different majority could seriously reconsider *Roe v. Wade*. It could happen, but it wouldn't affect California. It wouldn't affect a lot of states because a lot of states already had rules like *Roe*.

We have an independent's attitude towards abortion that is completely solid, so (a) it wouldn't affect a lot of states, and (b) it's only one issue out of the hundreds of issues that come before the United States Supreme Court every year. What's more important, Mr. Bauer, is whether the appointee is capable of doing a good job on all questions?

[President] George Bush didn't understand that either with [Justice] Clarence Thomas. I hate to name names, but I've never gotten over that appointment. There's a person who just was not prepared to do the work, and hasn't shown since, in my judgment, that he can do it. It's a shame. But again, if you're just looking for philosophy, you're going to commit that sin

1. 410 U.S. 113 (1973).

because you just fall into it. And the public and the press and the politicians all the way to the President of the United States don't understand that very well. Some do, but the majority don't. In most cases, a judge's philosophy doesn't make a difference.

Now, in the cases in which it does make a difference--to get back to your original question--the staff attorney must subordinate his or her personal views to those of his or her judge. There's no question about that. There never has been. We don't even try. I never tried. Admittedly, I was young and he was old. I respected him. I never tried to change Judge Schauer's mind, and I don't think I've tried to change Judge Mosk's mind. Of course, I don't have to because he and I agree on so many things, anyway.

What I would do today if I were suddenly working for a very conservative judge is a good question. I think I would try to do my job as best I can if there was a close case. If my hypothetical conservative judge were uncertain and undecided, then I might unintentionally, or even intentionally, try and explain why policy considerations would point in one direction rather than another. But if he said, "No, thank you," I would let it drop because it's not my business.

For example, Hal Cohen is the current chief of staff of the Chief Justice. He has worked--just because of the happenstance of retirement--for a wide variety of justices. He's been here getting on for 30 years. He's worked for a wide variety of justices because people retired sooner than they expected or died, and he wound up being moved from one judge to another, with a wide variety of political views. For a long time, he was a permanent law clerk for Justice Tobriner, than whom there was no more liberal. Then at one point he was working for a very conservative judge. Now he's working for a justice who is more centrist than anything, and he's been able to do his job just fine because he understands--as we all do, I hope--what our job entails.

I haven't had to do that kind of mental gymnastics. I've been lucky. For the first four years, I didn't feel confident enough to try and put a personal toe in the water; and since then, I have worked for Mr. Liberal, and it's been easy sailing. I've had an easy time. I won't deny that.

LaBerge: Well, what about the other justices on the court? The Chief Justice was Phil Gibson.

Belton: You want me to reminisce about Phil Gibson?

LaBerge: Yes.

[Interview 7: February 14, 2000] ##

LaBerge: When we last finished, I don't think we had quite finished talking about Justice Schauer and what his impact was on the court, just even from the time that you were with him, your observations.

Belton: Right. As you remember, I joined him in June of 1960, and at that point he was in the twilight of a long career. I think I already mentioned that he began as a justice back in the forties and

was on our court since 1942. Actually, he served long before then in the thirties too as a superior court judge and a Court of Appeal judge briefly, but a fairly long service as a superior court judge. So by the time I joined him, he was in his last four years as an active judge.

By then, the court had evolved, as the court does constantly now; or maybe the pendulum had swung--to mix metaphors here--more to the center. He found himself to be more in the minority than he was when he first joined the court because he was fairly conservative all his life, although he had some landmark cases that were not conservative. In his last years, he became a little more liberal, even in criminal matters. But by then, he was in the minority in many cases, so he wasn't able to make a major contribution in those last four years. I suppose we fought a holding action. We wrote our share of majority opinions, but we also had a number of dissenting opinions.

LaBerge: Do you remember the first one that you were involved in writing?

Belton: I'm afraid not. That was a long time ago--hundreds and hundreds of opinions ago.

Chief Justice Phil Gibson

LaBerge: Now I've read that--because we're going to talk about Chief Justice Phil Gibson--that he and Justice Schauer were law partners at one time, or they worked together in Los Angeles. Do you know anything about that?

Belton: That I didn't know. It's possible. They both had long careers. They both came out of that area, and they were both about the same age at that point. Gibson, of course, joined the court in 1939 but became Chief Justice pretty shortly afterwards. Let's see, he was Chief Justice a couple of years later--'40. Right, one year later.

He came directly from the Department of Finance, if I understand correctly. He was the director of the Department of Finance, and Culbert Olson made him first a member of the court and then Chief Justice. Olson served--what--'38 to '42 as the only Democratic Governor since the early years of the century, until Jerry Brown--I mean Pat Brown--the Browns--*père et fils*. [laughter] And of course, now we have one [Gray Davis] too, but it's been a long stretch without Democratic Governors. So Phil Gibson was appointed and joined the court. Shall I talk a little bit about that?

LaBerge: Yes.

Belton: Okay, he brought to the court a management style that the court had never had before. I don't think ever. All the other justices and Chief Justices came up through judicial ranks and thought and acted like judges, at least in this century. In the last century, who knows? We had some strange ones at the beginning, but that's because we didn't have any history when we first became a state. But in this century, they were all pretty well the offspring of a long judicial career in each case, so they acted and thought like judges.

But Phil Gibson was an administrator. I'm not going to give you a biography of Phil Gibson because I don't know it. Others can do that, and I'm sure it's been written down. But the one thing that struck everybody when he got here was that he was a can-do kind of person. He got things done--and sometimes in extra-judicial ways, but they got done. He just continued to act the way he used to act when he was in the state government. That is to say-- Well, the stories are legion about his technique of administering the judicial system.

In those days, the Judicial Council, if it existed, was extremely small, and there was no Administrative Office of the Courts. There was very little administrative apparatus, that now is so enormous and does all the court administration at all levels of the California courts. In those days, the Chief Justice pretty well did it all, what there was. There were some local initiatives, of course, and the local presiding judge in the counties, and the local presiding judge in the Courts of Appeal, made a lot of the decisions too; but whenever anything had to be settled from above, it was basically the Chief Justice who had the responsibility. They didn't have the luxury of ordering studies to be done and reports to be prepared and committee debates and analysis. They just did it because there wasn't anybody else to do it. Admittedly, the state was a lot smaller, and then, the judiciary was a lot smaller, but there was just no apparatus.

Gibson knew a lot of judges personally because it wasn't a big judicial system, and he was just that kind of a person. He knew a lot of trial judges, he knew the few C.A. judges that we had. I'm sure he knew every one of them. There weren't that many in those days, so he would simply do it on a personal basis.

For instance, before we had the 90-day rule--which you and I have talked about, and I explained that you don't get your salary, your judicial salary, paid to you if the case goes more than 90 days without being decided. Before that rule, which was put in the Constitution at some point, if some judge got way behind on his cases, Gibson would just pick up the phone--these are superior court judges--and say, "Hey, Charlie. Charlie, you know, you're giving us a lot of trouble. Can you get your act together?" Or--well, that wouldn't be the exact words because that's a modern phrase, but some phrase like that. He leaned on him--à la President Lyndon Johnson--and jawboned until he figured out what the problem was. And if the guy needed help, he arranged for help and got the thing done. And it would be true of Courts of Appeal too.

It was completely extra-judicial, but it was very efficient. I don't think there was anything illegal about it; it was just an unusual way of operating that we'd never seen before.

He was legendary. A phone call from Phil Gibson was something to be feared if you were a judge at any level who had not been doing your job: that is what he was looking for. He just wanted people to do their job. He worked hard himself, and he wanted everybody else to work hard. And he knew what their jobs were because he'd done all those jobs.

He got to know them all, and he knew the ones who were likely to fall behind through sloth or through incompetence or through inadequate organization; and he knew when to lean on them and get things done. It was quite an experience for all those years. He was Chief

Justice for a long time--from '40 to '64--24 years. That's one of the longest. And throughout all those years he ran the state judicial system very efficiently, very effectively.

He was also a great outgoing kind of personality. I remember him well.

LaBerge: What kind of contact did you have with him as a young research attorney?

Belton: Just up and down the hall. He was my chief, and I stood out because of the wheelchair.

LaBerge: Right.

Belton: And he wanted to meet me. Who's this young man? He knew where I went to law school and that satisfied him; and so we had good rapport. He was very outgoing. If you'd see him in the hallway, he'd say, "Hi, Peter. How are you? What's happening today? Are you keeping up? Do you need any help?" and things like that. He was very outgoing and friendly.

I got to know his staff quite well. He had a good staff--a quite varied staff. And one of his staff went on to become my fellow law clerk for decades, and that was Olga Murray.

Olga Murray joined the court back in the mid-fifties, four or five years before I did. She wound up working for Phil Gibson, on his staff as one of his staff attorneys. She worked with him for those several years, so a number of the tales I tell, I'm probably just repeating what I heard from Olga. You could probably get them directly from Olga and see if I got it right.
[laughter]

Bonnie Iturbide, Staff Attorney

Belton: For example, Gibson liked to have staff parties. He was very social in that sense, and he loved to entertain his staff. He was very loyal to them. He had an interesting staff person--a fellow by the name, Bonnie Iturbide. It's a Basque name, and sometimes it's written with a Y. I think in his case it was an I, but you'd have to check. Bonnie Iturbide was blind and yet he was a staff attorney; so I wasn't the first disabled person on the court. I was the first in a wheelchair, but I was certainly not the first who had a major physical disability.

He went around with a guide dog. In the building he didn't use a dog; he used staff attorneys who were going his way. He was a staff attorney for years for Gibson. When Gibson retired, most of his staff broke up. That's the way these things tend to happen. Some of them got reassigned, as Olga did to our staff. Others went into private practice. Bonnie went into private practice and had several decades of very successful--very successful--private practice here in San Francisco. Lived in a beautiful house, had a wife, and then they had a couple of dogs at that point.

LaBerge: Since you just mentioned him, what kind of--

Belton: Accommodations?

LaBerge: Yes. I mean, are the cases in Braille?

Belton: No, they're not. Nothing is in Braille, so he had to have everything read to him. He had readers. I didn't stick my nose in, but all I know is he did his job. I know he had readers--people who read things to him. He had been blind all his life, and he had an extraordinary memory, which one develops under these circumstances; so you could read him the case and he would remember what was in it and what it stood for and the name of it and where it was to be found, and then a year later, he'd still know it. That was an interesting story.

LaBerge: And he probably dictated his memorandum.

Belton: Yes, he did. Remember, this was long before there were any high-tech devices like voice recognition software, which would be perfect for a person like that. But by using--as blind people did in those days--using assistance of various sorts--maybe they were law students who knew something about the subject--they could just read to him. This was the way it was done.

There's a little of that in my family. When my mother came to San Francisco to live after she was widowed, she found out about places that need people to read to the blind, and students who need people to read to them--graduate students, quite often. I don't think it was Lighthouse for the Blind, but there are two or three institutions like that.

She went and volunteered when she was first here, when she was more active. She did a lot of reading to the blind, and they'd have her read an entire long article or half a book or several long chapters, and it was often very technical. It wasn't always law. Sometimes it was law, sometimes it was medicine, sometimes it was engineering, or something like that. Usually, she didn't have the foggiest idea what it was all about, but she was capable of doing it; and even with her French accent, which was pretty strong, they were delighted to have her.

My sister has done the same thing in Florida where she lives--again, where there's a demand for this. In Florida, in fact, she does it at a radio station. She reads over the radio to blind people--reads the newspaper. Certain local radio stations will have programs once a day or once a week, where people come and just read the newspaper. That's how it was done in those days and, as I say, it still is to some extent.

Bonnie was one of that interesting staff, and Olga was another; and there were several others that went on in different directions.

Chief Justice Roger Traynor

LaBerge: Well, another person who was on the court--but not Chief Justice yet--was Roger Traynor.

Belton: Right. Well, at that point, he had been on the court since--when? Let's see, '40--also 1940, August of '40. And he, like Gibson, had no judicial background. He came directly from being a law professor at the University of California at Berkeley Law School. Each demonstrated in a

different way--because they were very different people--that you can be a successful justice of this court without having any judicial experience. At the time of Rose Bird's troubles, that was a comment that was often made: "Well, what did you expect? She had no judicial experience." I often would mutter to myself at that point, What about Gibson and Traynor?

LaBerge: Right. [laughter]

Belton: [U.S. Supreme Court Justice Felix] Frankfurter, I might add, is another one. And William O. Douglas. Of course, it's much more common in the United States Supreme Court. At least it used to be, but Frankfurter is another one. He also was a professor before he came on the court; so it can be done.

During those same years, Traynor was on the court, and I would also see him in the hall, but it was a very different experience. He was very quiet, very shy, even though I became very close to his senior staff attorney, Don Barrett. Nevertheless, he didn't come out of his office as much. When you did run into him, it was just a quiet nod, maybe a little very soft, "Hello," but no, "Hey, how are you doing, Peter!" No, that wasn't his way.

He was a scholar. There's no two ways about it. He wanted nothing more than to stay in his chambers and write landmark opinions, which he did a lot of. When he became Chief Justice [1964], which was at the same time that Gibson and Schauer retired, his Chief Justiceship, which was shorter, was much different from Chief Justice Gibson's term in office. It was--to use another overworked phrase--a sea change, because he didn't operate that way, and it would never occur to him to operate that way. He operated by going through channels, by making discreet, quiet inquiries, and by asking someone to look into these matters.

He always tried to achieve consensus. Gibson--I think of him more like Lyndon Johnson: "Come, let us reason together," and he'd grab you by the elbow, and you found yourself reasoning his way pretty fast. [laughter] He achieved consensus, but it was pretty swiftly done and it came from above. Once you had had the Phil Gibson treatment, you knew it.

LaBerge: Well, didn't Traynor institute--oh, not the Judicial Council, but maybe some kind of training for judges or for trial judges?

Belton: I'm sure he did a lot of that. Again, I will confess I don't know his history in detail.

LaBerge: Well, I don't expect--just whatever little anecdote you have.

Belton: That would be the way he would operate. He would operate by setting up other bodies that were staffed appropriately to do things. I'm sure that that's when a lot of this developed in the council and in other administrative support for the courts, but it still was small.

I came across the other day a Supreme Court phone list for 1969, just before Traynor retired, and the entire Judicial Council is just a handful of people. I can give it to you if you want.

LaBerge: How many are on it now?

Belton: It's not so much the council--the size of which is fixed by the Constitution. It's the apparatus that the council administers, the Administrative Office of the Courts, which numbers in the many hundreds. Who knows? They have half of the building behind me here, and they're constantly expanding. They find new things to do, new technologies to exploit, new programs to administer. It just grows and grows and grows. The times have changed. That explosion occurred much more recently, though, I would guess in the eighties.

Gibson's Champagne Cork and Family

Belton: What is there more to say about Phil Gibson before we leave him? Let's think. There's the famous champagne cork story.

LaBerge: Let's hear that!

Belton: Yes, I thought you'd like that. [laughter] Well, for years it was rumored that there was a scar in the ceiling of the Chief Justice's chambers. In those days, all the chambers had perforated acoustic tiles with the little holes to control the sound levels. They're soft and they dent. And there was a dent in about the middle of the room, and it was generally said to be the result of a champagne cork that projected in that direction at the time of some celebratory event or other. The point being, of course, that you're not supposed to have alcohol in state buildings. But that was the kind of rule Gibson probably disapproved of heartily. He was a bon vivant, no question about it. I'm sure it's true. Unfortunately, when they remodeled the building these last few years, all that disappeared; so the evidence, if any, is gone.

He married his secretary, Vicky, when he was in his advanced years. He was in his mid-sixties, at least. They produced a son, who was in my office here just a few weeks ago, and whom I hadn't seen since he was running up and down the halls in knee pants. Now he's a grown lawyer and looks about 28, 30, years old. All of a sudden he's grown up.

LaBerge: What's his name?

Belton: Blaine. He practices law up in the Pacific Northwest; I think Seattle. It's a specialized kind of practice. It has to do with--as you'd expect in that area--start-ups and all the modern commerce that's going on in the Internet-related categories. I think I've got that right.

His mother still lives because she was quite a bit younger than Gibson. For many, many years--she's a delightful lady--she has lived in Carmel, and still does. Olga used to go and see her, and probably will again. Yes, she was a charming, charming lady, Vicky--Victoria.

We did miss Gibson when he retired. He was such a force. And I'm told--I never was on the receiving end--but you would expect such a person could also have a temper and you wouldn't want to cross him. For such a person, it goes with the whole picture. If you crossed somebody like Traynor, you'd just get a frown and a mild rebuke, if any; but Gibson could be pretty vigorous. It never happened to me or anybody who lived to tell about it, so I guess it was okay. It goes with that kind of personality. But he certainly got things done. It's amazing.

Role of the Chief Justice

Belton: The contrast, unfortunately, would have showed because Roger Traynor was not really very interested in administering the judicial system. He saw the job of Chief Justice as being the leading scholar--the scholar among scholars--and setting the court's legal agenda, determining which cases could be used for what purposes, and undertaking to resolve conflicts in the law, and move the law forward in various fields. It was primarily the jurisprudence of the court that he was interested in. He had little interest in the administrative stuff that Gibson would deal with so gustily--if there is such an adverb--with gusto. [laughter]

That may be, in part, why Roger Traynor may have begun various of these other organizations: to relieve him of that burden, so he didn't have to do it. There are a lot of administrative burdens on the Chief Justice. Any Chief Justice has to deal with them. Some are better at it than others.

The current incumbent [Ronald George], whom we will come to, is excellent at it, but it goes up and down. Some of them are good; some are really not very interested in it. The system goes on, but it moves in fits and starts.

LaBerge: How would it have affected your job, the way the Chief Justice handled that?

Belton: Not directly, except for assignment of dissenting opinions and reassignment of cases. If he puts out a calendar memo and it doesn't get strong support, it may have to be reassigned; and Gibson was the kind of person to do it swiftly and painlessly, while some others, like Traynor, might agonize over it, because he'd say, "You put all this work into it, I hate to take it away from you. Can we work out something?" He would agonize longer. But with Gibson, the axe would fall.

No, the final product wasn't that different. The court was just as productive under Gibson as under Traynor. I haven't seen the statistics recently, but I certainly have that feeling. And there were just as many important cases. Because Traynor wrote some of his great cases while he was still an associate justice. But the style was quite different in that way.

LaBerge: Well, I was going to ask you--but maybe you've kind of answered this--what you see as the role of the Chief Justice.

Belton: I think I've kind of answered it, yes.

LaBerge: Yes, you've kind of answered it, that there are those two facets. What about as sort of a leader of the other justices? How much?

Belton: You mean to bring them together on votes?

LaBerge: Yes.

Belton: Well, there are really these two facets. The thing that distinguishes them from the other judges is that they have administrative duties. As far as the jurisprudence is concerned, they have only one vote. Their vote doesn't count any more or any less than the newest kid on the court. They

know that. So that when you hear the phrase, "the Warren Court" or even "the Traynor Court," that's just a shorthand phrase, a convenience; it doesn't really imply much.

These judges, by the time they get to the highest court of the biggest state in the union, or the highest court in the federal system, they are pretty independent people, if not *prima donnas*. Not to say they're all *prima donnas*--some of them are that too--but at least they're very independent. They're not easily led. It's like herding cats: they don't herd too well. They have their own mind and their own opinions. The chief can urge that they reach consensus, but he only has persuasive powers; he doesn't have any sanctions. If they don't want to do it, they don't do it. There's nothing he can do about it--he or she.

In anything I say, "he" goes for "she" as well because we have to include Chief Justice Rose Bird. I'll say "he" for the purpose of convenience.

After all, any other judge can go up and down the hall and try and persuade other judges to join him. The chief is not the only one who can do that. There were some who did a lot of that, and maybe still today, who try to achieve a consensus to support their view. He doesn't have any more power or any more votes.

You could say, theoretically, that he could make it uncomfortable for them with respect to assignments. If they didn't go with him, he could assign them boring cases or such. That has never happened. It doesn't work that way. These people are not so petty as that. If the chief tried to persuade someone to vote his way on a case--which I'm sure Gibson did quite often, and Traynor did rarely--he'd just be speaking as one judge to another at that point. He would be urging the substance. He would be saying, "My position is better, and here's why." So they don't have any different power when it comes to jurisprudence.

The big difference is when it comes to the administrative field. And there, there are several things to administer. First, they have to administer this court, and that means assigning the cases. Somebody has to make these decisions. When we grant review, somebody has to decide who's going to write the calendar memo for the case, so that's the first decision. The chief has always made that decision--every chief. And they don't do it, to my knowledge, on any petty grounds whatsoever. It's an important decision. It can affect the outcome of the case, perhaps, but it certainly is an important decision because there are some cases that are a lot more interesting to work on than others, and you wouldn't want to be stuck with just the uninteresting ones. They're all important, but some of them just are sexier than others.

But that assignment is always made on the grounds that we've already talked about: on the ground of, first, trying to keep the workload roughly even. That's the primary ground; and that, of course, is purely statistics. There is no matter of opinion involved in that. Secondly, on the ground that if it's a subject that that person has some particular expertise in, or has written previous cases in the field and so forth. And there can be other grounds, but the point is, they're all objective and it has nothing to do with personality.

That's the first thing the chief has to administer. Then the chief has to determine who's up next in the rotation--who would be the person who should get the next case. It's his own staff

that does that because those figures are pretty simple to deal with. You just keep a running total of how many opinions each justice has worked on. You see who's got the least.

The Judicial Council

Belton: But for the larger question of administering the judicial system of California, that's the other administrative responsibility of the chief. That's a much, much bigger issue because it's an enormous system and we have thousands of judges. It goes from the trial level to the Courts of Appeal. And it's become so big that it has to be done through the Judicial Council and the Administrative Office of the Courts.

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Belton: I'm not going to tell you the makeup of the council. That's in the Constitution. You can look it up. But the Chief Justice is the chair ex-officio, so he's always, ultimately, the boss. That's why his technical title is not *Chief Justice of the California Supreme Court*, it's *Chief Justice of California* because, in a sense, he's the Chief Justice of all the courts, and therefore, he has various responsibilities towards them too. But that part of his responsibilities, it's largely done through the Administrative Office of the Courts--AOC, as we call it--because it's just too big to handle.

He has the ultimate say in a lot of things, but again, on the council he has just one vote, like everybody else. But he would have persuasive powers, and new people would tend to look to him for guidance and so forth. On this court, that's the way it works, and it's always worked that way.

Want to go back to the 1964 court--the '60 to '64 court?

LaBerge: Yes.

Belton: I'd have to reconstitute it.

First Impressions of the Court, 1960

LaBerge: And also, if you could remember your first impressions. I mean, coming here from out of state, newly doing court work.

Belton: Let's think.

LaBerge: Because you probably hadn't had much contact with the court system.

Belton: No, nothing with California courts in any way. In fact, when I studied for the bar exam, I discovered pretty quickly that I had to study some subjects that weren't even taught at Harvard

Law School, like community property. Community property was a mandatory part of the bar exam. It's only the eight western states that have it. There's nothing like that in New England. Only eight states out of the union--in those days, 48 states--so it wasn't taught back east. I suppose now they probably offer it as an elective for people who know they're going to practice in California. But in those days they didn't do that, so the result is that was a topic I had to learn from scratch. And there were a couple of others: one called equity, which is different kinds of civil remedies for civil problems. It's taught here in a different way, so, yes, I had to learn that.

We didn't know anything about California. We didn't know the geography, we didn't know the lay of the land. It was all a new experience. Everything was happening at once, and when I came on the court, I'd just been there that one year, teaching at Boalt. I had a brand new baby--new wife, new baby, new job. Everything was very new.

Luckily, Justice Schauer was very avuncular. He was that age. He was very kind and considerate.

I've been very lucky in the two men I've worked for. Only two. They have both been so kind and considerate of my needs and my family obligations. I couldn't have asked for better relationships. Justice Schauer was very warm and accepting. And his staff--not so much the other two lady lawyers, but the secretary who helped me, because in those days, I still had the problem I have today about typing.

We had no computers. I mean, we're talking 1960. We had electric typewriters, but they were the state of the art at the time: IBM Selectrics. I'm not even sure I qualified for one at first. They were pretty rare. They were expensive too: \$300-\$400 each. Wow. Our budget was minuscule.

The way I wrote my opinions--you might be interested in this.

Drafting Memos à la Peter Belton

Belton: The way I wrote my draft opinions in those days--calendar memos--all memos, in fact--calendar memos and conference memos--it's a little different from the way I now do it. Then, as now, I write them out in longhand. I've always done that.

LaBerge: Because that's the way you think, or because that's the way it's easier for you?

Belton: Both. The main reason is that I'm a relentless self-editor. I'm very hard on myself. If the finished product looks highly polished, it didn't just come that way from my pen. I wish I could show you. I don't keep them--. I should have kept them for my archives, except I don't have archives. But when I finish a long calendar memo--I use legal length papers, and I'll have a pile an inch thick, let's say, for a calendar memo of 50 to 60 pages, or even more so. For an automatic appeal, I'll have a pile of these things an inch thick, maybe 50 pages of the yellow legal length. This has always been the way I work. There will not be one of those 50 pages that hasn't got about half of it crossed out. Not one!

I constantly rewrite and rewrite and rearrange, and that's why I write in pencil and have an eraser. I will erase and cross out, and erase and cross out; or I'll put *IN*, meaning "insert," and then I will turn over the sheet, and I insert on the back a new sentence or so. I've always done that. It's just the way I write.

I cannot understand how people can compose on the typewriter, or at the keyboard--let's put it that way, to include computers. I just can't compose on the keyboard. I need to be able to edit constantly.

The way I do it is I write a sentence, and then before I write the next sentence, I go back and I read the previous sentence. Then I write the second one, and then I go back and I read the two of them together. Then I write the third, and I go back and I read the three of them together. At that point, I probably start making some changes in the first two because they need to flow, they need to be logical and in sequence and in order and in persuasiveness. I have to avoid repetitions; I have to use the right words. I've got a big vocabulary and I like to use it. I like to avoid repeating words, but without using synonyms just for the art of using synonyms. You've got to balance clarity and persuasiveness, on the one hand, with style.

There's a word you don't hear much around here any more, but I think legal writing should have style. It should move along, have a certain rhythm, should have nice turns of phrase, sentences the right length--a mixture of lengths of paragraphs and so forth--everything very carefully planned out. It doesn't just happen. It takes a lot of work.

The finished product may look neat, but you should see the yellow pages of foolscap that I throw away. A chicken couldn't find his way through them. You scratch and scratch. It's changed and amended and edited. When I edit someone else, as when we had externs and I had to edit their work, they would complain and call me the Slasher. But I said, "Well, maybe I am, but I do it to myself, too. I do it to myself just as much as I do it to you." At first, of course, that was very little consolation for them, but then they realized that you get a good result that way. You think I'm kidding, but one group of externs gave me this mug before I left. Look at that.

LaBerge: The Slasher! I want to say for the tape that Peter's showing me a wonderful chocolate brown mug with gold lettering: "The Slasher."

Belton: They had it made especially because that's what they all called me.

LaBerge: [laughter] I notice you don't use this.

Belton: No, I don't want to risk breaking it. It's a good one. And if you used it, the words would start coming off, so it's just a memento.

LaBerge: I also want to say for the tape that Peter has on his desk about 12 pencils, all sharpened, with erasers, ready to go.

Belton: It's more scientific than that. Look at them again.

LaBerge: Some are number twos.

Belton: No. All the sharp ones are pointing one way and the dull--

LaBerge: And the dull ones are pointing the other way!

Belton: Yes. As I use one, I take out a sharp one and I put a dull one in the other way, so I can tell at a glance how many sharp ones I have. Then when they need sharpening, I give them to my secretary and she sharpens them all. I have another similar packet on the other desk--and an eraser. I go through erasers, and I go through pencils.

LaBerge: Well, this is going to be good for posterity because, you know, in 20 years, people might not know about erasers.

Belton: And pencils? [laughter]

Okay, to get back to how I did work for Justice Schauer, and indeed for a number of years after that, I'd write it all out in longhand. Then I would go to our secretary's office--we only had one secretary for the staff--and I'd sit next to her and read it to her. As I did, she would type it: it goes into her ears and she types it right on the typewriter. I got to be very good at that because that's how I did everything. I had to.

LaBerge: You read it to her because--

Belton: Nobody else could follow it. I'd made so many changes. It would be a disaster. Indeed, I will confess, I even made one or two changes as I was reading. Something would occur to me when I'm reading it. My work has to sound good as well as read well; and so, if something didn't sound right, I would make a change at that time.

She would type it directly onto--. We're going back to the dawn of technology here. I'm not sure that anybody will remember these things. She would type them onto Ditto masters. Ditto masters was a form of mimeographing where--. How can you describe--. Do you remember those?

LaBerge: Oh, I do. I am a former first grade teacher. I used many mimeographs.

Belton: Okay. Each page was actually two sheets joined together along a short end, and the top sheet had a thicker, slick kind of plasticky surface, and the other one was just backing. These are not carbons. These are different. You would cut the master, and so as you would type, it would make an impression on the front. You could read it on the front, but that didn't matter; that was just to see what you'd written.

What mattered was the back side of that front sheet, where the letters were cut out by the impression of the key. When the time came to make copies, you put it in a special machine. *Ditto* was a brand name, but it was a mimeograph, right? Originally, you cranked the machine by hand, but then eventually, they became electric. It would go round and round on a drum, and each time it went round, it would make an impression. I forget the detail. I didn't have to

do that part of it. And a duplicate sheet would spin out--spit out--usually in a ghastly, pale blue color. Remember that ink?

LaBerge: I do, yes.

Belton: A pale purple-blue ink, which would ultimately fade. I've still got a few of those around in the files, and I look at them and say, I can't believe we did this. This was so long ago. [pause]

The drawbacks were two. One was, you could only make a limited number of copies before the copies became too fuzzy; and secondly, the biggest drawback for all of us working with it was it was so difficult to make changes. There was no delete button. It was really difficult. This master was literally cut. It was like chiseling a granite monument and then deciding you'd put the wrong name on the monument. It was so difficult.

The secretaries became skilled at typing out corrected text on little strips of paper, and they could tape them on the back with scotch tape, making a few new words--type three lines and make a couple of changes, and then tape it on the back in the right place. They'd flip the master forward, put in a new little bit of paper, flip it back, and type it again. But you still couldn't make substantial changes. You could change one word to another--*indicate* to *involve*, for example--if it was more or less the same length; but you couldn't take out entire paragraphs without retyping the entire document. So it was very difficult to edit. Maybe that's why I learned to be so careful in editing beforehand, because it was so difficult to change once you started typing it.

Advanced Technology

Belton: That's what I did for years. I would just dictate straight to the secretary, and the secretary would take it all down. Eventually, we had a more advanced reproduction system and I switched to using a tape recorder. It would have been sometime in the seventies. They were Dictaphones, but not using cylinders, as they originally did, or belts. They would use cassette tapes. Once I discovered that system, I've used it ever since. That is to say, I still write out my text in longhand, in great detail, but in the quiet of my own office, I dictate it to the tape recorder.

In that system, you can make changes because you can stop and rewind very easily. It's got a rewind button, and you dictate over it if you want to change something as you go, if you realize you want to make a change.

Then I give my secretary the tape, and at her convenience she will sit down, put on her earphones, put the tape in her playback machine, and press the foot pedal. She can go at her own speed, using the foot pedal to go back if she misses something. I speak clearly, as you know, but if, say, she gets interrupted and she wants to go back and listen to something, she can do so. She can also transcribe when I'm not here. For example, the first thing in the morning, she gets here earlier than I do, so when I come in, it's already done and on my desk.

Then I make corrections, in case she missed something or makes a typo, which happens, but not very often. She's very good. Her name is Pat Sheehan.

Then the third stage of this process was the computer revolution. But the only advantage I get of it is--I still write it out longhand, I still dictate into the tape recorder, but now I have no compunction whatever about making changes because I know she has the text on her disk and she can hit that delete button, and move, and cut and paste, and copy, and do all these things.

So it's a lot easier for her; but in a strange way, it's harder for us--all of us here--because when it's so easy to make changes, you hesitate to stop making changes: "Let's make one more, and let's make one more." It is so easy. It's too easy in a sense. You have no mechanically-imposed discipline. You're completely undisciplined because the machine is so compliant with your needs that you don't have to stop and say, "Well, is it really worth changing this comma here? It's not that important, you know. Is it really worth all the effort it's going to be for me or my secretary?" Not any more. Now, it's no effort at all. It has revolutionized the writing of opinions and memos in this court and in all appellate courts. I'm sure of that.

And the same thing would be true, for instance, of changes after oral argument. Remember, I've described to you how we write the calendar memo in advance of oral argument, then you have the oral argument, and after that, changes are made in order to conform to the effects of oral argument and the decision of the court in the conference after oral argument. Well, those changes now are so easy that, in some sense, there tend to be more changes made than they used to make after oral argument because it's so easy to do.

Then you press a button, and the whole thing prints out. In fact, you can press a button and get what's called the red-lined copy, where you get a copy of the new opinion showing all the changes, in strike-through and underscore font styles, that you made from the previous version, so everybody can tell at a glance exactly what changes you made. The material you take out is struck through, and the material you add is underscored; and it's all done automatically. It's amazing. I don't know how it does it.

LaBerge: How do other people write their calendar memos? Just for a contrast.

Belton: Well, as far as the nuts and bolts are concerned, I doubt if anybody does it the way I do it. I'd be very surprised if anybody wrote it all out by hand. I'm sure they all compose on the typewriter, and that is a lot easier now because of the reasons we've just talked about. How they did it before, I don't know. So when I say I can't imagine how anybody would compose on a typewriter, I should qualify that to be honest and say "until the advent of the computer," because beforehand, I don't see how you could have made changes. Now, with the computer, they're basically doing what I'm doing; it's just that I'm not as good a typist and I do like to write it out. It's just a habit. It's very old fashioned. I may be the last of the breed. But I'm sure they all compose at the typewriter. I go up and down the hall, I see them all staring at their screens and typing away, and I know that's what's happening. It's doable now because of the delete button and all the controls that we have now, so I'm sure they all do that--and the judges too, to the extent that they get involved in it.

LaBerge: Now, the judges, when they receive your copy, how do they change it? They must change it by hand?

Belton: My judge?

LaBerge: Yes.

Belton: Yes. Nobody could read my handwriting. It's not that my handwriting is bad, it's just because there are so many changes. So I give him a typed version, and he works on that. That's just like me editing an extern. You write in the margin. You cross stuff out. I've seen Justice [Joyce] Kennard's editing of her staff: she's a very vigorous editor, and they often do it two or three times. Some judges are more vigorous editors than others. I really can't speak for many of the others because I don't go around looking, but I happen to know that she does a lot of editing. So that's how they do it--just write in the margin or between the lines.

VI DISABILITY ISSUES IN EVERYDAY LIFE

Manual Wheelchair

LaBerge: What was going on in your just personal life right now [1906-1964]? I know you had a new baby. I'm wondering about--

Belton: Back then?

LaBerge: Yes. What kind of place you found to live, and how you got to work.

Belton: Who cares?

LaBerge: Well, it's good for--. It's historical.

Belton: No way!

LaBerge: Also the fact that you're using a wheelchair--what you were using.

Belton: Okay, all right. This will be a little personal stuff, but the angle we'll exploit will be because of the disability: what did that fact make happen?

I had a manual wheelchair. There were basically no power wheelchairs in those days; or if there were, they were real antiquities. Woody Allen used one in one of his early movies and it was a monster. It was just a prop because the technology hadn't developed to the extent it now has. So everybody used manual wheelchairs.

Moreover, they were heavy. Now manual wheelchairs are featherlight because the materials they're made of. I can give you exact figures. The standard manual wheelchair then, and probably today--they still make these monsters--weigh about 45 pounds empty--45 to 50 pounds empty. The standard so-called lightweight chairs, which I finally got one of, weigh about 25 to 28 pounds. And the featherweights that are used in racing and basketball are, perhaps, ten to 12 pounds. That's a quarter, or fifth, of the weight because they're made of such high-quality materials. Instead of being just steel pipes, they're titanium. The same thing is

happening with golf clubs and tennis rackets: they use high-quality materials that are lighter and stronger.

The first one I had--I didn't have a choice, they were all the same. There were only two or three models on the entire market. Now there are hundreds. It was just a standard folding wheelchair made by Everest and Jennings, which, at that time, was the pre-eminent wheelchair supplier in the country. They were in Los Angeles, I think. Everybody had an E&J, and they were all big monsters.

My arms were stronger then, so I was able to push it. But they never were very strong, so I could only push it on a level surface that was hard, rather than the carpet, or outdoors, even worse. You'd need a hard wooden floor, or tiled floor, or linoleum floor because the chair would sink in otherwise. It would be like slogging through snow or sand.

So at home, we had no carpets, except we had one in the living room because we had to have something for company that didn't look quite so institutional. But we were lucky we had nice polished floors--hardwood floors. Anybody who got cold feet stepping out of bed onto the cold floor--that's not my problem. [laughter] I said, "I will entertain no complaints about that. Put on slippers." But that way, I could push around the house.

Beyond around the house, it was difficult because you're always coming up against a slope. It wouldn't take much of a slope to be a problem. Pushing uphill is very hard. You push up and let go of the wheels to move your hands back, and you roll backwards. So you go forward for two feet and back one, and forward for two feet and back one. It's very hard work. You've seen, I'm sure, people who still use manual chairs trying to push up slopes in San Francisco, and even when they go up the little curb ramps, I wince for them. I know how hard it is.

Moving Around at the Court

Belton: At the court, what did we have? At the court, there was linoleum or carpets. The carpets were nailed down, so that wasn't too bad. They were so-called industrial-grade carpets, which have a tight weave; or the kind of carpets you see in department stores on the floors, and they're wall to wall in airport terminals and all such places. They are for sound-deadening and for color. Basically, that's what they're for. And they're tight weave, so they aren't quite so bad. But even so, it would be difficult if you had to go very far on them. So they made my office floor linoleum. Everybody else had wall-to-wall carpeting of that kind. In my office I asked for plain linoleum. It was concrete underneath, so they weren't about to offer me parquet; but they said, "You can have linoleum." They winced at the thought, but I said, "I need it"; so they gave me linoleum. I had the only office in the entire building with linoleum.

Sometimes people would notice it and say, "Why? Do you not rate a carpet?" I had to explain to them, "No, I don't want one."

LaBerge: You needed linoleum.

Belton: Yes, that's right. So I could move around my office very easily. But the problem was to get to the library or up and down the hall to see some other staff or judges or the secretary's office or what not.

Well, the secretary wasn't a problem. Her office was literally right next door to mine, with a communicating door between us, so that was great. But to get to the library, which we then had to use quite often because we didn't have as many books as we now have in our office libraries--as we certainly have, I think, online--I had to ask for a push. I would try and not make a nuisance of myself--I still try and not do that--by timing it. I would do other things until I saw somebody going that way, and then I'd ask can I have a ride; or if my secretary was free--I didn't just demand. I'm not that kind of person. I try to be as least disruptive of other people's lives as I can be.

And I do it today too if I need help. I try not to ask too often, and only when I absolutely can't do it.

But there was a pretty steady traffic in the halls in those days. The library got a lot of use, so there was always somebody going by on their way there. Then I'd stay there and I'd work in the library, sometimes all, or most, of the day, and spread out on the tables with all my books and my yellow pad and my pencils and work there. That way, I didn't have to go back and forth; and if they wanted to find me, they knew where I was. And I do that here too.

I'm trying to remember when I got my first power chair. It would have been early seventies, so we were here then, obviously.

Getting to Work

Belton: And you asked about getting to work. Well, in those days I didn't drive either; so, at first, my wife had to bring me to work every day. Then the baby came along; as the baby was only three months old, the baby got plunked in the car. Car seats were very primitive in those days. Nobody realized the dangers. My wife slid me in on the so-called transfer or sliding board, threw the chair in the trunk or the back seat, and came to work and unloaded me. Then she had to come back and pick me up in the evening. That was a lot of effort, especially when you have a little baby.

We settled in what's called Parkmerced, which is a big housing--. I was going to call it a housing development, but it's higher quality than that. It's an apartment complex. *Complex* is

the word I meant. It was run by Metropolitan Life Insurance Company, out in the western part of the town, out by the zoo, in that direction. It was always very foggy out there.

But eventually, I found somebody who worked in the court and lived out there and drove, so I went in with that person both ways; and my wife didn't have to drive me back and forth any more. Then the big excitement came when I first started to drive by myself again, which was, let's see--. It was a month before my second son was born, so that was--. He was born in June 1964, so it would have been in May '64.

LaBerge: How did that come about, learning to drive again?

Belton: Well, I drove before polio, so I didn't have to "learn to drive," thank goodness, because you never forget. It's like riding a bicycle, as they tell you. What I had to learn was controls. First, we had to invent them. This was back in the time when there weren't any hand controls to speak of, and if there were, they were very primitive. More importantly, there were no lifts to lift you into the van, or into the vehicle, in your wheelchair. That's a big story. Maybe we should save that for next time.

LaBerge: Shall we do that?

Belton: Yes, because it's an interesting story.

LaBerge: Yes, of learning to drive and the--

Belton: And commuting.

Accessible Housing in San Francisco, 1962

[Interview 8: March 23, 2000] ##

LaBerge: We were going to start with the year 1964, and as part of Justice Mosk coming, you also learned how to drive that year. If you'd like to talk about buying your house and how you made it accessible--

Belton: Well, that requires that we go back to 1962. As I made clear earlier, I got married in 1959, came to California, and started working first at Boalt Hall and then in the court. During those years, we were living in an apartment, first in Berkeley when I was at Boalt, and then, when we moved to San Francisco for me to start working for Justice Schauer, we stayed in an apartment complex in San Francisco called Parkmerced.

LaBerge: We talked about that.

Belton: Yes, right. And after two years there, we thought we'd like to try and find a place to call our own, as the saying goes. So we began looking for a house that would accommodate our needs, which, at that point, was my wife, myself, and our child, who was then a couple of years old. That was not the problem. The problem was finding a house that was accessible to the wheelchair and for my needs. And in San Francisco, that's very hard to find, for two reasons:

One, the housing stock in the city was then, and still is, largely older houses. There's not a lot of open spaces that were built on more recently, and, as a result, everywhere you look, the standard San Francisco house is on a twenty-five-foot-wide lot with a garage underneath and a flight of stairs up to the first floor, sometimes the second floor, but at least one flight of stairs because the garage tends to be underneath the house because the lot is so narrow. That's the standard San Francisco city lot. All the houses in the Sunset are that design, and many houses in the Richmond and so forth are that design; so all of those were inaccessible without some elaborate outside stair lifts. In those days, that was a pretty uncertain proposition. They did exist, but the technology wasn't very advanced, and you were exposed to the weather and vandalism, and so forth; so we decided not to go that route, but to see if we could find a house that was level, which is, as I say, in San Francisco, very difficult to find.

Somehow we got wind of one of the few developments going on in the city of new houses, and that was in an area called Diamond Heights. Diamond Heights is the southern shoulder of Twin Peaks, right at the top of Market Street, which at that point is called Portola. There was an open area of some few dozen acres that had not been developed, ever.

When we first moved out to Park Merced, I would drive by it, of course, on the way to work and on the way back from work. It was a group of little rolling hills, and I even recollect there were some livestock--maybe a few goats grazing--on those hills, literally in the geographical heart of the city if you look on a map.

What happened is that the development of the city had swept around it on both sides and beyond it out into the Sunset and then further on to the south. It became like an island that was surrounded by city buildings. The reason, I learned later, is that after the fire in 1906, when the time came to rebuild the city, it was the same sort of thing that happened in the downtown hills--Nob Hill and Telegraph Hill. Instead of laying out streets that followed the topography, curving around the hills, the city fathers, in their wisdom, simply laid the grid of right-angled square blocks right down on top of the hills without regard to the shape of the topography, without ever going and looking at the premises.

The result was you got vertiginous streets in downtown San Francisco that go straight up and straight down--the terror of the tourists. Instead of taking the opportunity that nature had afforded them to rebuild the city in a more rational and, I would think, even more attractive way, they just laid a square grid down on top of the map and began. The result was the square grid that you have downtown.

When it came to Diamond Heights, somebody decided long ago that that wasn't a very good idea, so streets never got built. It was all just grassy hillsides. There were a few property

owners that owned it and farmed it right in the middle of the city. Then the Redevelopment Agency, looking around for places to build houses back even then--in the late 1950s this would have been--decided to take title to the property by eminent domain because the owners were not interested in selling.

They still had to condemn the property, but they wound up with a lawsuit on their hands because they were condemning it on the grounds of "urban blight," which was their only power to condemn, and there wasn't any urban blight in any normal sense of the word. It was beautiful grassy hillsides. So the case got litigated and went all the way to the Court of Appeal. In the late fifties, the Court of Appeal held that when property is-- Let's see, what's the exact way to put this? There is another kind of urban blight in addition to rundown dilapidated slums, and that is property which is useable for city purposes but which, because of the topography, has never been developed properly. Therefore, if the city would have had the chance to do it, they could do a better job and make it more useful for the residents of the city.

So they were given title to the land, and they proceeded to lay out the streets; but this time they did it properly and followed the shape of the hills, so there are rolling, windy streets following the topography of the neighborhood.

Customizing an Eichler Home in Diamond Heights

Belton: They began to sell it off, as the Redevelopment Agency does, after they put in the streets and utilities. They began to sell off the property to developers, who would develop sections of it; and the section that I was interested in was bought by Eichler Homes. It was a Bay Area developer who had pioneered, some half-dozen years or so earlier, a housing design that was very modern, very modular, and very open, that looked like it had some possibilities for my use.

Eichler had already built a number of subdivisions down the Peninsula, in Palo Alto, and then, either just before or just after, up in Marin at Terra Linda, and a number of other places in the suburbs. He had never built one in San Francisco, and the reason is that he never found lots that were big enough. His standard house design, which was the main thing that he invented, was all on one floor, and yet it was quite large, so it needed a lot bigger than a twenty-five-foot-wide city lot. It wouldn't work with a city lot of traditional size, so he apparently persuaded the Redevelopment Agency to allow him to use lots that were a little wider--thirty-five-feet wide. But that made all the difference.

And they're quite deep. They average maybe 150 to 160 feet, so there's quite a bit of space. The agency also required that he not cover more than 50 percent of the lot with the house. There still had to be quite a lot of open space. But that worked out. He was able--very adroitly, I thought--as an architect to design a single-level, fairly compact house with various outdoor areas and with no steps.

When I found out about this, I got a look at his plans and realized there's something we could do here. I made contact with the company, which then had its headquarters in Palo Alto, and went down to spend a Saturday morning with the architect, going over the blueprints. This was long before the houses were built. It was just an empty lot, and the whole Diamond Heights project was slowly being thought about. Eichler was one of the first people to build there. Ultimately, of course, quite a few others did.

So we holed up with the architect and went through the plans of a house inch by inch, identifying simple things that could be done to make it totally accessible. If the changes were made before the house was built, they would be really inexpensive. If the changes were made after, it would cost a lot of money. That was the way to do it--redesign the house before it was built.

I'll give you a couple of examples. In the standard Eichler house, the patios are recessed. It's one step up from the patio into the house. Just one step--which most people consider a level lot. And it is, but for me, one step is still too much. So you could either do a ramp, as my neighbor did later, or do as we did, which was to have them pour the concrete level with the house. So they poured the concrete about one inch below the house, just for rain drainage purposes; and that's easy to bridge, so that all the entrances and exits are basically at the same level as the interior floors.

A couple of other things: the bathrooms. He had designed a master bathroom that was quite modern in concept, which had a separate shower area and a separate dressing room, and several internal partitions, all of which would have been in my way. I asked them to put it back to the plan of a traditional bathroom--one big room with the various appliances spread around the room--so that I wouldn't have interior partitions to deal with.

And the third big change, which is interesting--most people don't realize that doors tend to be too narrow and light switches tend to be too high. The standard light switch is about 47 inches off the floor, which is much too high for most people in wheelchairs--certainly if you have any arm weakness, as I do. There again, it's very easy to build them at the right level if you do it beforehand; so we arranged for all the switches to be thirty-six inches above the floor and all the doors to be thirty-six inches wide instead of-- Well, some bathroom doors are typically only twenty-six inches wide.

I never understood why bathroom doors are always narrower than bedroom doors. Presumably the same people go through them, carrying the same whatever, and yet they somehow seem to think the bathroom's doors can be narrow. That was the bane of my existence when I traveled in motels. I could always get in the bedroom door, but the bathroom door tended to be tiny. I had various devices to deal with it, but I wouldn't want to deal with it on a daily basis. Maybe I'll mention one of those devices right now.

Travel: Door Wideners

LaBerge: Do mention some of these.

Belton: Yes, well, this one, at least, because we're not going to come back to this. All this is long ago, before there were any requirements for access to public buildings, like motels, which have been prescribed since 1982 in Title 24 of the California Code of Regulations and more recently in some ADA [Americans with Disabilities Act] provisions. But in those days there were no regulations, so bathroom doors could be as narrow as twenty-two inches sometimes. But I found a device, and I can't remember where I got it. Some fellow disabled person said, "Here, look what I've invented," and it's what we call the "door widener." You know the old saying, "If you can't raise the bridge, lower the river," right? Well, you can't widen the door, so narrow the chair. So what they really were were chair narrowers; we call them door wideners just as a joke.

It would only work with a folding manual chair--the standard folding manual chair. There was a long screw and a hook at the bottom and a car window handle at the top--an old car window handle. You would hook the bottom of this device to the telescoping part of the frame of the chair with you sitting in it. [demonstrating] Then you hook the other end of it over the arm rest. Then you take the handle and you start turning the handle, and the handle turns the screw, and the screw begins pulling the bottom up towards the top, and therefore collapsing the chair while you were sitting in it. It slowly squeezed you like some medieval torture device. It was not much fun, but it would get you a couple of inches off the width.

That, plus sometimes literally taking the door off the bathroom, would enable you to get into most motels [bathrooms]. But it's not that simple. Once you got inside the bathroom, you could unscrew it and breathe again. And you had to do the reverse to get out. You had to do all this every time you had to go to the bathroom.

Well, you minimized the number of times you had to go to the bathroom because it was a big effort, but it made it possible to travel in those days with my family to motels and hotels around the state of California and elsewhere. We always took the door widener with us because it was a very critical piece of equipment. Otherwise, you couldn't get in the bathroom in most motels. As I say, this was long before they had disabled access rooms and all that.

Wider Doors, Lower Light Switches

Belton: Anyway, I wasn't going to go through that in my house, so I had them design all the doors to be thirty-six inches wide, which is the standard size for the front door. Front doors are thirty-six, interior room doors are thirty-two, and bathroom doors can be anything. Some interior room doors are only twenty-eight. I made them all thirty-six, which means that some of them look a little odd, but it's very easy to get through.

Then light switches: we had them all installed at the lower height, which is the height you see here, which is now required by law, but it wasn't in those days. The one thing we forgot to do--because we didn't think it was important but now it is--is the other aspect of height: in the current regulations, not only must the light switches be down at about thirty-six inches, but the wall sockets, that enable you to plug appliances into the wall, must be raised. Instead of being down by the baseboard, if you look behind you there, you'll see they're raised about 12 inches from the floor, and that's only because of the access regulations. Nobody would ever have done that except for the access regulations. And I could have had them do that too, but I didn't think of it. It didn't seem to me to be as important; and it isn't, in the sense that you don't plug and unplug stuff very often compared to the number of times you run the light switch.

But I now wish I'd had that done because whenever I do need to plug something in, sometimes I just can't reach it. It's too far down. But it doesn't happen that often. Light switches are very important, though.

We made all these simple changes in the house. They charged me \$500, but it would have been many more times that to do it afterwards, especially the concrete work. And that was really just for their trouble to change one house. They were building 12 identical houses in that block. It was just one that was going to be different; and yes, it was trouble for them. They had to redesign the plans and so forth; but they got it right when they built it, and it's made all the difference ever since.

Once that was agreed upon, we just had to wait while they built them. We would come and watch and say, "That's our lot." At first they all looked alike, and pretty soon you began to see differences in the concrete flooring and so forth. These things were built fast.

They were on an assembly line. That's how he managed to keep the price down very low. I mean, the price of this house was \$35,000 [laughter], and yet it's 1,800 square feet, four bedrooms, two and a half baths, separate dining area. It's a big place. But it's all on one level, and that made it possible for me to occupy it in comfort.

We moved in March of '62, as I remember. March of 1962 is when that portion of the Eichler homes was opened, and we moved in.

LaBerge: Anything different in the kitchen?

Belton: No, because in those days I had no need to use the kitchen. I was the usual 1960s male. I had no skills in the kitchen, and no need to learn them. My wife was very good at it. She spoiled me and did all the cooking and the washing and everything. I had no reason to go in there, so the kitchen was a standard Eichler.

The bathroom, though, was important. Instead of having a stall shower, which would have been useless, we had a standard tub with a shower over it, and I had to figure out how to get in and out of it. But at least the place was accessible 99 percent.

There are very few houses in San Francisco as accessible as that one. Partly, as I say, because the housing stock is old; and partly because--the other reason that I didn't mention earlier--the city is, in many areas, on sloping hillsides, so even if you wanted to build a level house, you would have difficulty doing it. It would be difficult to get in the house and out of the house, and the sidewalk in front might be quite steep.

The only reason that my house is totally level is because we're on the top of the hill, the crest of the hill. There was a slight slope, but they filled it because Eichler really needed to have level lots for his design. In other parts of Diamond Heights, he finally did accommodate his design to topography, and he designed a two-story house that could work on a hillside. In fact, he designed several models that would work on hillsides, but none of them would have been any good for me. These 12 houses in our block are about the only ones that I could have gotten into in the entire Diamond Heights, and maybe even in the entire city. As a result, I'm still here today in the year 2000--thirty-eight years later. I'm still in the same house because the basic shape and structure of the thing is so perfect for me that it would be very hard to duplicate it.

The second reason is that I've spent a lot of time and money and effort adapting it still further--in ways that we can talk about later--to my needs. But it's only because the house, structurally, is in that shape and on that level lot with these wide doors and big open design that I have been able to adapt it. It's so easy to make it even better because it's all open and you can see everything and you know where things are and you have access to what you need.

Relearning to Drive

Techniques of Using a Car

LaBerge: Well, how about relearning how to drive?

Belton: That started shortly after we moved to Diamond Heights. I began thinking about that as a possibility.

LaBerge: Did you know other people in wheelchairs who were driving?

Belton: I didn't know them personally. I knew that some did, and I was intrigued by the idea. Until then, I'd been driven back and forth to work--first by my wife, and then by a co-worker--I think I mentioned this--who worked for the court, like I did at that point. But I was young and full of enthusiasm and wanted the independence, if possible. That was the first--come to think of it--gesture of independence that I made. It really was. I haven't thought of it that way, but it's true.

LaBerge: I even feel that way myself about driving and having a car--that that's my independence.

Belton: Let me tell you, it's even more so if you can't get on public transportation. Nowadays, you can get on some public transportation in wheelchairs; but in those days, it was impossible. There was no BART, and Muni was not accessible, the buses were not accessible, there were no accessible taxis--there aren't many today. So you were frozen out.

How these people got around--other disabled people--I don't know. I had a wife and a car, and she was very good at it. I'll tell you how we did it. This was in the days that I had the manual chair only--the folding manual chair, which is quite lightweight, although they're even lighter now than they were then. But she was strong, and she could pick up the chair easily and fold it.

Sliding Boards

Belton: I would pull up next to the car on the passenger side in the chair, and we had what was called a sliding board. It's also called a transfer board, and I still use them for different purposes. I made all mine. You can buy them, but they're easy to make. What it is, is a piece of plywood--let's say, half an inch thick. It's about eight inches wide, and it's like a plank made of plywood. The length varies according to the need. I have three of them--different lengths according to different needs. For getting into the car, I needed the longest of the three because you were not that close to the car seat. You had the running board in between. So it was maybe thirty inches, thirty-two inches long, and it's polished and varnished and--

LaBerge: Is that what you did? You varnished it?

Belton: Yes, that's easy. I did a lot of that sort of thing in those days. Anyway, you take this board and you slide. You lean over and put one end of it under your seat--under your tush to be precise--you know, your own body--and the other end on the car seat. Then somebody stands behind you and holds the board with one hand, so it doesn't go anywhere, and with the other hand, pushes you across the board, and you slide across the board onto the car seat.

I would still use that today if I had to get into a front seat of a car; and I do still use it today every time I go to the dentist. Think about that: how to get into the dentist chair or the optometrist, but particularly the dentist. That's how we do it. I take a slightly shorter board with me to the dentist. The dentist chair arm can be moved out of the way, and one of the arms of my chair comes off. That's with this chair--the electric chair--but you can do it with any chair. And then the dentist's assistant, who's a strong young fellow, slides me across onto the dental chair and I'm in business.

In those days, that's the same way I got onto the bed too: by using a sliding board or transfer board. Most people who used them also used them to get on and off the bed or the

toilet. For the toilet, I had a shorter one because you can get closer. The one for the bed was about twenty-four inches long.

Once I was sitting in the front seat of the car, my wife would take out the board and leave it there in the car. Then she would take the wheelchair and fold it up and throw it either in the trunk or, if it was a four-door car, the back seat--or even a two-door car, depending on the size of the door and the size of the chair--whatever place is appropriate. For a while, we had a station wagon, and it just fit in the back of the station wagon very simply.

Traveling by Airplane

Belton: But that's nothing I could do myself, so there was no independence there. I was hauled in and out like a sack of potatoes. I wasn't driving, so I had to go where the driver went and see what the driver saw and so forth.

Still, we did that for years; and even after I had started to drive, we used that technique when we were traveling because I would always travel with a manual chair even when I had the electric chair. I never travel with the electric chair. It can be done. I know a lot of people do it, but you're risking damage in the hands of the airlines because these chairs are heavy and complicated and have parts that stick out. The baggage handlers aren't all trained in handling them, and it's a risk. I know people who have had some horrendous damage done to their chairs, and it's just too important to me to take the chance. That's one reason.

The other reason is that the airlines don't like to carry them because they have batteries. The airlines for years refused to carry them at all on the theory that the batteries were a hazard. They claimed they might spark and blow up the plane. So a different kind of battery was invented: the so-called gel cells. Gel cells are not the standard, old-fashioned automobile battery, which are full of sulfuric acid, that we all used to have in our cars until recently. The gel cells are permanent. You don't have to add water to them like you used to have to do with the lead acid batteries, and as a result, they're sealed. Being sealed, they're much less of a hazard to airplanes, and so the airplanes had no reason to refuse them any more. They're perfectly safe to carry; but the airlines still resisted, being very conservative and not wishing to comply with the needs of the disabled.

The hell with you, was their attitude. And this was the big, fancy airlines. I mean, all the big names you can think of--which I don't need to name--but all the big names were very uncooperative, and it took lawsuits and government regulations under the ADA and so forth finally to force them to accept power chairs with gel cells. And they're still very reluctant to do it. If there's any way they can give you a hard time, they will.

Like with my friend's scooter. She has a power scooter. Some of them have even said, "Well, you have to remove the batteries," even though they're gel cells. She would take with

her a certificate from the wheelchair installer, saying, "I installed gel cells in this scooter" because they look sort of alike. But still: "No, you've got to take the batteries off."

Well, taking them off a scooter is very hard to do. You've really got to tear them off, and it's very scary, unless you know what you're doing. They're designed to be hard to remove: you don't want them to come flying off if you're going along the street. But recently, most airlines will allow you to travel with gel cells.

Hand Controls for Paraplegics ##

LaBerge: Okay, so how about you learning how to drive? How do you get into the car itself?

Belton: I'm coming to that. You know me, I always give you the background first.

LaBerge: The background is wonderful. I don't think all of this history of the different stages of accessibility is recorded any place.

Belton: Right, the evolution. I still used sliding boards for other purposes. For instance, this last fall, when I was having physical therapy at a hospital, I took the sliding board with me in order to slide from this chair onto the special table that PTs [physical therapists] use. They have a table that moves up and down that they work on you on. So it's still an important, simple piece of very low-tech equipment. But I love it. Low-tech equipment is the best kind of all. It never breaks. I love it.

That's how I used to get in and out of cars; but when I decided I wanted to drive myself, I began looking around and talking to fellow disabled persons. Until then, there were disabled persons who drove, but they were usually strong, young paraplegics. Paraplegics have normal arms. In fact, super-normal arms because, since their legs don't work, they put all their strength and body-building and exercise into their arms, and they wind up with arms like weight-lifters. Yet their legs tend to diminish in weight because they lose muscle mass, so their legs tend to wither and become very light in weight. From the waist up, they're powerful; and from the waist down, there's hardly anything, so they can throw themselves in and out of wheelchairs and cars just by their arms.

They push up with their arms and lift themselves across because they have plenty of arm strength and very little leg weight. What they did, and still do, is that they come up in their manual wheelchair alongside the driver's side, open the door, throw themselves into the car behind the steering wheel--then reach out with one hand, fold up the wheelchair--these were two-door cars--lean forward, pull the back of the driver's [seat] forward, exposing the entry to the back part of the car, throw the chair in the back of the car behind the drivers' seat, close the door and, using hand controls, drive away.

It was marvelous. I watched them do it, but there was no possible way I could do it because I didn't have any arm strength. I mean, it was marvelous, and there are many who still do it. If I could do it, I would do it that way. We all would if we could, because that way you get to drive a regular car. So you spend no money on the car except for the hand controls, which are a few hundred dollars, and you can drive a regular car, which means you can park anywhere.

The only thing is you need space on the left to get out into your wheelchair. That would be okay if you're parallel parking at the curb. The only time it's a problem is if you're in a 90 degree or diagonal parking. There may not be room. But for all curbside parking and other arrangements, you're all set.

LaBerge: Who does the adaptation for your vehicles?

Belton: For years, there have been people who designed hand controls. The original ones--I don't know--they're probably designed by disabled people. [President] Franklin Roosevelt had hand controls, and in his day there was no automatic transmission, so his hand controls also had to work a clutch because it was a manual transmission. Today hand controls only have to work the brake and the accelerator because there's no clutch. He drove big powerful cars, and he loved it. He used to drive around Hyde Park just for the entertainment of it, for relaxation. He had big open cars, and he had them fixed up. I'm sure his hand controls were among the first ever invented, and they were invented because of the force of his personality and the importance of his name and family and money and his determination to be independent in driving himself.

He would drive people around Hyde Park or other places just for the joy of taking them out for a drive. These would be visiting heads of state. He'd say, "C'mon. I'll drive you around."

They might reply, "Well, we have drivers, we have chauffeurs."

But he would say, "No, I want to drive. I want to drive." That was FDR.

So there have been hand controls of one sort or another for a long time. Originally, they were all custom-made, obviously; but in more recent years--at least since the fifties--there have been a number of companies that make standardized hand controls designed to fit all kinds of people. And that's what these young paraplegics would be using, but which I could not use.

Adaptation of Van for Wheelchair

Belton: By then, of course, automatic transmission was in, so the problems were simpler in those days. And I could have used hand controls--perhaps. That wasn't the problem. The problem was I couldn't get in the car. So we needed to do something totally different.

And this was very early on in the process. Now it's well settled. But this was at the dawn, mind you--the dawn of disabled driving by people who can't transfer into the front seat by themselves in the way I've described. And the solution that began dawning on people at that time was some kind of situation where you can stay in the wheelchair.

What did that mean in the way of vehicles? It eliminated all passenger cars because wheelchairs are too high. There's no headroom and no visibility. Even if you could figure out how to get into the vehicle, they're just too low inside. I mean, all of them, including the older ones, which were bigger, like the Checker Cabs and the big Pontiacs and DeSotos in those days. Of course, if you went back far enough, you might find one that was high enough; but then you would be too high off the road, and furthermore, you wouldn't have automatic transmission. So it had to be something that was available at that time. We're now talking in the fifties and early sixties.

At the same time, the class of vehicles called vans was beginning to expand in various ways and become more available for the public. Now vans, of course, had been around forever because they were used for deliveries by commercial operations, by the post office--you name it--the milkman; everybody had a van.

A van is basically a truck. It's basically a small truck that's completely enclosed. But the chassis is a truck chassis, and it rides like a truck--don't kid yourself [laughter]. There's a big difference in the ride and the steering and everything. You know you're driving a truck when you drive a van. Originally, they were designed only for commercial use. There was no noncommercial demand. The equivalent today of the van--the minivan, used by the housewife with the kids coming back from soccer and the groceries and the dog--was what? The station wagon.

LaBerge: That's right.

Belton: That was the equivalent. Now there are virtually no more station wagons because vans have displaced them; but in those days, if you wanted that kind of carrying capacity, you bought a station wagon, and you could put the kids and the dogs and the groceries in it. Everybody did. Station wagons were very popular, especially in suburban places where people liked to live this life. But a station wagon was just a car with a longer body on it. It was not a truck, and there was no more headroom than a car; so station wagons were no use to us.

We thought about those. In fact, I owned one at the time, but it was basically a car frame with a different body. So we had to think about vans, and in those days, vans were only commercial. The last thing they cared about was making it comfortable or useable or attractive in any way to the general driving public. Contrary to today, where until SUVs came along, vans were the biggest sellers and money-makers for Ford, Chevy, and Chrysler.

Anyway, in the course of my asking around, I came across a fellow who lived over in the East Bay--quite a distance in the East Bay--Orinda, I believe. I forget his name because that

was a long time ago, but we all called him Jiminy because he would say, "By Jiminy, we can do this."

Jiminy was a quadriplegic, which means that he was more like me in his physical configuration. His arms were deeply affected also, but he was young and he had been mechanically minded. I think his quadriplegia was from a car accident or motorcycle accident, something like that. It usually is. And he was determined to solve this problem, so he'd gotten the idea of getting a certain kind of delivery van.

They were generically called panel trucks, and they were small upright things like bakers used or milkmen. The one in particular that he found was made--of all things--by International Harvester. It was called the Metro-Mite. It was the smallest one they made, and it was also what we were looking for, the smallest one. And it was high.

An ugly duck. I've got a picture of mine because that's what I wound up with. And they were used to deliver things like bakery goods and milk and flowers, and you name it--just local, city driving. They were very underpowered and awkward and ungainly-looking things. But it was very simple and plain and straight. It had a flat floor and plenty of height and plenty of eye space to sit up--head room. And once you were inside the thing, it was obvious that it would work.

You could take out the driver's seat--which was just a captain's chair on a post anyway--and you could put the wheelchair in behind the steering wheel, then figure out some way to lock it down.

The problem was to get in the vehicle. Today that's no problem because you use a wheelchair lift, and there are many models. But at the time I'm talking about, there were no wheelchair lifts; nobody had thought about that. There was no need for wheelchair lifts, and nobody had ever invented one. But Jiminy and his friends said there's got to be some way to design a moving platform that will raise you up to the level of the inside floor of the vehicle. And I've got to give him credit: they thought it up. In retrospect, it's primitive, but it served my purposes for years.

What they did was this: The vehicle had double side doors on the passenger side, and you could remove the passenger seat--they have a little bench seat across the back--and these double side doors would open up. They went to a body shop, and they designed, and then built, the thing--I admire that--designed and built the thing with just common sense and common parts.

The first thing they did is they said, "Well, let's cut out part of the floor, and you could move stuff around underneath the floor so there was nothing in the way." It's a very simple vehicle, as I say. That would be half the platform. Then for the other half of the platform, it would fold up so when it laid down, it would be double the floorspace of this platform. And when you wanted to close it up, that part would be hinged and fold up out of the way, inside the double doors. You would open the double doors, fold out this flap--which is half the platform

--lower the platform down, get on it, ride up, go inside the van, fold up the platform again, and then close the doors. You're in business.

LaBerge: Did you do this manually or--

Belton: Oh, yes--not like it is today. But that was the easy part. We used steel rods. The doors were opened by rods. You may have seen school buses today where the driver opens the door with a long rod. We made something like that. The problem was: How are you going to make the thing go up and down? By what power? Well, we didn't have a lot of weight. The early electric chairs were on the market, which are much, much heavier than manual chairs. But even manual chairs have some weight, of course, so we needed to have something pretty strong. The original device--I don't know why you care about this because this is ancient history--the original device that Jiminy invented was a pair of vertical shafts, one at each end of this platform. The platform rode up and down on these two shafts, and it was pulled from above by wire rope--cable, as you call it--about a quarter-inch diameter--onto a reel. A little motor turned the reel and pulled the rope and pulled up the platform. The rope was coiled on the reel, and in reverse it would lower it down, and the platform would go down with gravity, with the weight of the person. And it worked, to everybody's astonishment.

It was all done by trial and error. They didn't know what size to use, what shape to use; they didn't know anything in advance. They invented the thing right there in this body shop. There may have been others being invented all over the land at the time, but this is the only one I know about. That was the sort of thing that had to be done in the late fifties and early sixties because there was nothing else on the market. If you were going to drive sitting in a wheelchair, you had to invent the whole thing. It was not like it is today. So I learned about it, and I went to see him.

LaBerge: Where did you meet him? How did you hook up with him?

Belton: I don't remember. Somebody said, "You ought to talk to"--whatever his name was--and "here's his phone number. He's working on it." I went to see him, and he was filled with enthusiasm. He said, "You know, I think we can do it." I had the money and he had the ideas, so we put it together. He had a prototype that had problems, and mine was probably the first successful working one that he and his people made. It certainly worked.

It took a few months to build this thing; the body shop did it in their spare time because they weren't making much money on this job. They gave me an estimate, but they had no idea how much time they would spend on it. That's usually the case when you're doing something for the first time. Finally, we got the thing all set, and I went and picked it up.

LaBerge: Another question: Which came first, the chicken or the egg? Did you learn how to drive first? Or did you find the van first?

Belton: I thought I told you that I drove for a couple of years before I had polio. Here's the situation: When the time came for me to drive this thing away, I, of course, was very apprehensive.

LaBerge: I would think. I would think just to get on that lift even.

Belton: I made him go first [laughter]. I said, "You know, you're next on the line here. You're already in worse shape than I am, and it can't get any worse. Go on."

He said, "Yes, what else can I break?" [laughter]

He was a real tough guy. Good old Jiminy! He proved the lift worked, and then it was my turn. I got in behind the wheel. I could reach the wheel, and we had power steering. We figured out a very simple, primitive way to attach the chair to the car. When I think back on it now, I was risking my neck every inch I drove.

LaBerge: I mean, did you really feel stable, that you weren't going to move?

Belton: No. If I'd ever hit anything, I would have gone through the windshield because the connection that we devised is laughable when I think about it now. It wouldn't have held up under any kind of impact. I know because I've had a few head-on collisions in my current vehicle, and the lockdowns held me very solidly, but I know they [the connections in the earlier vehicle] wouldn't have held me there. But luck was on my side. I never had any collisions. Anyway, I got in behind the wheel, and he said, "Okay, take it away."

Specialized Pedal with Vacuum Valves

Belton: I was terrified. There was nobody telling me how to do it. I had no hand controls: I've got to explain that too. The standard hand control didn't work for me, and the reason it didn't was I didn't have normal arms. It still doesn't work for me. In the standard hand control, you have to steer with one hand and work the gas and brake with the other hand all the time. There's no auxiliary controls. That's it.

Now, if you've got normal arms, you can do that. I mean, heaven knows I drove with one arm when I had a girl in the front seat before polio [laughter]; and that was my left arm I was driving with. Somehow I managed to change gears because it was a manual transmission car. The other arm was around my date. That's what teenagers did in the 1950s. So I knew how to drive with one arm, but I didn't have the strength to do it any more.

So we had to invent another way for me to control the brake and foot pedal that didn't involve using my hand. That was probably the most brilliant part of the invention. He came up with the idea of an oversized accelerator pedal that looked like the outline of a shoe--like when you go in the shoe store in the old days, and you take off your shoe, and you put it on a metal plate to see how big your foot is, and they measure it. Well, it looked like that. It was the outline of the shoe in diamond plate steel. It was mounted in the middle on a pivot, so it was

like a see-saw. You push the toe down, and the heel goes up; you push the heel down, and the toe goes up. [motioning]

Instead of being mounted at the bottom, like the present accelerator, where the whole thing goes down, you mounted it up here in the center, so it did double duty. The concept was, and it still works for me today, that when you press the toe down, you get gas, just like you do in a regular accelerator. That's very easy to do. You just extend a little arm that presses the throttle control, and that's what happens in the regular car today. It's just a mechanical linkage that presses the accelerator.

The hard part was to make the brakes come on with your heel. That was the hard part. Using standard parts--that's what I love about it: standard equipment designed for other purposes, but adapting them to our needs--they came up with a vacuum valve which was like the valve of a power brake system. It was a cylinder about the size of a flashlight, with a rod going through it and a membrane in the middle, creating two vacuum chambers. It was a vacuum-operated valve, which is what power brakes are too; but this one boosted the power brakes themselves.

In other words, you start with power brakes, but they're not enough. Power brakes still take too much effort, so you need something to boost the booster. The power brake itself is a booster: on all cars that have power brakes, it boosts the regular brakes. It gives you extra power. It's as if you were that much stronger. But even that's not enough for me, so we need something to boost the power brakes, which, in turn, boost the existing brakes, the standard brakes, the service brakes, as they're called.

The brake booster runs off vacuum. A lot of things on a car run off vacuum today. There's plenty of vacuum because the motor creates vacuum all the time it's running. On trucks they can be air brakes; and horns on trucks are run by vacuum, and so forth. There's a lot of things that run on vacuum, and so you have vacuum hoses all over the car today--any car. So he said, "We've got all this vacuum, let's use it." So he ran a vacuum hose, which is about the size of your finger--just a flexible rubber hose--from the [manifold], where the vacuum is created to this valve, and that's a vacuum valve. The valve runs on vacuum.

That is to say, vacuum activates the valve. When you apply vacuum, it pulls, since it's a negative pressure. It pulls the membrane towards itself, and therefore pushes on the other direction; and that push can be very powerful depending on the amount of vacuum you've got and the size of the valve and the size of the diameter of the cylinder. This is all basic mechanics, and, as I say, these valves are used for a lot of reasons. The catalogues are full of vacuum valves. It's the opposite of air pressure. In other words, you notice that trucks have--you've heard the expression, Trucks have air brakes, and buses have air brakes?

LaBerge: Yes.

Belton: What happens there is there's an air compressor that blows air through the pipes and helps the brakes to work--powerful air pressure. Vacuum is the exact opposite. It's a negative pressure. It sounds strange, but it's just as powerful. A vacuum is--

LaBerge: [imitates the sound of a vacuum]

Belton: Yes, a vacuum is an extraordinarily powerful thing. Think of suction cups and vacuum cylinders of all kinds, like thermos bottles. They have vacuum in them. That's for insulation, but you can pick up a truck with a vacuum suction valve that's big enough, because vacuum can be extraordinarily powerful. A lot of things that you pick up in an industrial setting, you can do it with vacuum. You just have to have a good seal and a lot of negative pressure, which you create with an engine, and you've got the whole atmosphere of the earth pressing down on it. That's how vacuum works.

Okay, so he figured out a way that, when I push the heel down, it would open this vacuum valve, vacuum would flow in--so to speak. You've got to think about it as a positive flow, when in fact it's the opposite. That vacuum would be created from the engine, and it would force this rod forward, and the rod would operate the power brakes, and the power brakes would operate the service brakes. All this was underneath the heel and unobtrusive--invisible, in fact.

It was so subtle that I could apply the brakes as one needs to do--sometimes very gently, just slowly open it a little bit, a little bit, a little bit, as you do with regular brakes. You can tap them and apply them very gently when you're rolling up to something. That was the key to this system for me; and I think this is good for anybody who had less than normal arms, who therefore couldn't drive with one hand, because this permitted me to have two hands on the wheel.

Now the only reason I could do it, of course, is that I had some leg muscles.

LaBerge: I was going to say--

Belton: I guess I've been assuming that all along, but I've got to explain here. Being a post-polio, I have odd muscles here and there all over my body. That's what polio does. I think I told you this long ago, in polio the virus storms down through the spinal column and strikes at random various nerve terminations, all of which enter the spinal column at different points up and down the vertebrae. Some it hits, and some it doesn't, and no one knows why. It's wholly random.

In my case, I was left with some usable leg muscles and, in particular [demonstrating], this one.

LaBerge: Oh, yes, I can see it.

Belton: I can't do as well with this one, but this one works beautifully. I can press the toe down, I can press the heel down.

LaBerge: Yes.

Belton: Okay, let's get back on tape here. I was just demonstrating that my right leg--the lower part of the leg, the ankle, the calf muscle, and the foot muscles--all work pretty well, so I can press the toe down to get gas and I can press the heel down to get brakes. I can pivot like that with that foot.

Now of course, if you didn't have that foot, you may have had some other muscles you could put to use. This system could be adapted in different places. And if you didn't have anything below your waist--let's say you were a paraplegic or quadriplegic--you would have to do it by hand. But now they've got much more sophisticated hand controls that would enable you to do it, although that's a whole different story. I don't know all the ramifications about that.

I've been lucky enough to find this set of muscles and to put them to use, because if you have muscles, it's much better than any kind of device--assuming you don't wear them out. So that permitted me to drive this vehicle. That takes care of the problem of how.

Driving the Van

Belton: The question then was about not just controlling the vehicle, but driving it on the road and staying on the road--what's called road sense. The feel of the road, the distance, the ability to judge distances and oncoming cars and speed. Here I discovered, to my great pleasure, within a few minutes after driving on the road for the first time that it all came back to me. It all came back. I immediately knew where I was on the road, even though I'd never been in this car before. I hadn't driven at that point for--. Let's see, I was 18 when I first drove--18, 19, 20; and at this point, I was--what?--in my thirties. So it had been a decade or so since I'd driven. But you never forget. It's like the story you always hear about once you learn how to ride a bike.

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Belton: All these intangibles about driving all come back to you, or at least, they all came back to me very quickly, within moments. I was elated. I said, "My God, I know how to do this!" Once I overcame the initial concern, my confidence came back very quickly. With every mile I drove, I realized that this was going to be a piece of cake.

Driver's License Test

Belton: All I had to learn was the new controls; I didn't have to learn how to drive. And so, when I went to apply for a driver's license, I felt pretty confident. The examiner was terrified, of course. [laughter]

LaBerge: The examiner had to get in the van with you, right?

Belton: He certainly did, yes. And in this car, there was no front seat. There wasn't even a back seat, come to think of it. There were two benches that faced inwards along the sides, two benches that folded up that faced inwards. I mean, it's a delivery truck. It wasn't supposed to carry people, so it came with no passenger seat at all. The car came with just a driver's seat, and the double side door I needed for the lift. The back had double doors for loading and unloading when it was used commercially. We found this little space at the side--not behind me, but on the other side, on the passenger side, over the right rear wheelwell, where we built a fold-up bench seat to carry two people. It was a spring-loaded seat that would pop up so it wouldn't get in the way. It was a very small vehicle. For me to even maneuver around, I couldn't deal with much; but if you sat on it, it would go down like in a movie house where the seat goes up. And we put in seat belts. Luckily, the examiner was game. [laughter]

I think they probably didn't have to do it. I have a feeling that their regulations said I have to provide a fixed front seat with belts, but he was game. He realized we'd put a lot of energy and effort into this thing, and I was young and enthusiastic. He said, "Where do you want me to sit?" I said, "Well, there's only one spot," so he sat there; but it was so small inside, he was hanging over my shoulder.

He got in and put on the seatbelt. This was in San Francisco, which is a pretty scary place to take a driver's test anyway. "Well," he said, "we've got a routine we're supposed to go through, but I think under the circumstances, I'm just going to make this up as we go along." So we skipped the parallel parking and just started out.

We got out of the lot and started out driving around the city. He said, "Just drive me around for a while," so I drove him around for a while. Then he made me go up and down a couple of hills, and we had a little tour. When we came back, he said, "Well, you swung a little wide on one left turn, but otherwise, you did very well. I don't have any questions about your driving." I rewarded that confidence by having no problems for all the years that I drove that vehicle, which was from--let me think--'64, when I started driving it. Yes, I started driving it in the spring of '64, and I drove it until 1973.

LaBerge: Wow.

Belton: Yes, nine years. It was mostly around the city. I never went more than to some nearby suburbs because it was very underpowered. I didn't go up many hills because it was a big effort to go up hills in this thing. And it was an ugly duckling. We painted it, and we carpeted it, and even

carpeted the ceiling--that was just to try and keep down the noise. It was very a ugly duckling, and you knew you were in a truck. But by God, it got me where I was going.

Trip to the Hospital for Marc's Birth

Belton: I'll end this discussion by the following anecdote: At that point, Nancy, my wife, was very pregnant with our third child, Marc, my second son. For the two previous children, when they were born, we had to have somebody drive us to the hospital, or at least drive me. She was capable of driving herself, even during contractions; but someone had to drive me. And I didn't like that. She wasn't capable of dragging me in and out of the car on the sliding board in that condition. I didn't like that. So I wanted, if possible, to do it myself.

I began to see that if all went well, I would have the car--my first one--by the time, or before, this child was born. I tried very hard to work that. I'd tell her, "Hold off. Don't rush. I'm working on it." [laughter] And it worked out. I got the car just about a month before she gave birth.

We were, at that point, scheduled to go to Kaiser San Francisco for the delivery. I don't know if you know Kaiser, but it's on a hillside, and the parking in those days was up above in the Sears lot. It was then a Sears, Roebuck. There were no other Kaiser buildings in those days.

So she woke up--all our children were born in very reasonable hours, like eight or nine in the morning, so none of this midnight stuff--she woke up and said that it was time. We got up and got in the car. I drove and she was the passenger.

We got to the parking [lot], and she had a little overnight suitcase with her because they kept you overnight about two or three days in those days. We parked at the Sears lot. It was a cool, misty morning in June of 1964--June 6, of '64--which is actually the twentieth anniversary of D-Day. We'd made plans for that evening: it was also our wedding anniversary. We were married on June 6, '59, so it was our fifth wedding anniversary. So the twentieth anniversary of D-Day--everything was happening right at once.

LaBerge: Right.

Belton: Twentieth anniversary of D-Day, fifth wedding anniversary, and it turned out to be my son's birthday.

Well, the fifth wedding anniversary is a big deal, so we had planned a dinner out with some friends, who were actually staying at the house. I mentioned him earlier: his name was Bob Tyler. He was one of our annual law clerks on my staff in that year, and he was going to

help me at home while Nancy was in the hospital, because in those days I needed a lot of help at home. I didn't have all the equipment I have now. His wife Beth was going to stay with us too. She was going to do the cooking, and he was going to help and drive me to work, and so forth. So we were going to go out to dinner with them that night for our fifth wedding anniversary; but we started out to Kaiser, instead, in the morning.

We got out in the Sears parking lot and started down the hill. I was in my manual chair, of course. I didn't have anything else in those days. Nancy started pushing me down the hill. From our house to Kaiser, she had a number of contractions. I forget the exact number, but we were counting. We started down the hill, and I had on my lap her little suitcase. I was holding onto it, and she was pushing downhill. We got halfway down the hill, and she had a pretty substantial contraction, and she said, "Peter, I have to let go."

I said, "You can't let go!" [laughter]

Here we were in this drizzling mist, and a long hill lay before me, and I couldn't let go and grab the wheels to stop the chair because I was holding onto the suitcase. If I had let go of the suitcase, it would have gone down the hill. If I hadn't let go of the suitcase, we both would have gone down the hill. It was one of those moments.

To our rescue, there came--[laughter]

LaBerge: I'm waiting!

Belton: I know you are, and I'm dragging it out! To our rescue there came a couple of guys who were doing some remodeling of Kaiser. They're permanently remodeling that place. It's like the San Francisco airport: it's always being remodeled. They were working right by the side of where we were, and they looked over and they saw this scene, you see, of this very pregnant woman beginning to clutch her belly and this guy who was looking around desperately, wild-eyed, not knowing what to do. They came over and said, "You need help, ma'am?" We said, "We sure do."

One of them grabbed the suitcase, one of them grabbed me, and she made it on her own--maybe she took his elbow, I don't know--and we went halfway down the hill to the emergency room entrance, which was then, and still is, halfway down the hill. I saw a parking place in the driveway leading to the emergency room entrance. We went in, and she had the baby.

LaBerge: Like immediately?

Belton: Maybe an hour or so, but it was time. I said, "I'm going to go home and have breakfast and see the other kids"--we had two other kids then--"and I'll be back this afternoon."

I drove back to my house. I'd only been driving this van for a few weeks. This was a Saturday. I came back that afternoon, but the parking place that I had seen in the morning was

not there. And I mean, it was not there. There was a gaping void. They had removed that part of the driveway with a bulldozer during the morning.

LaBerge: Oh, my gosh!

Belton: It just wasn't there! There was a hole there, going into empty space. I had to do some pretty fancy maneuvering to back out of this tight driveway without falling down into this abyss in a car that I'd only been driving for a few weeks.

It was still raining. It was exciting! But I made it. I went in to see her and she said, "You should go out to dinner this evening anyway." I said, "We will. I was hoping you'd say that." We went out--the three of us, the remaining three. We raised a glass in her honor and the honor of my second son, and in honor of my fifth wedding anniversary, and in honor of D-Day--well, several glasses. That took quite a few glasses to toast, but it was an unusual day. I wanted to tell you the story because it relates to my first vehicle.

LaBerge: How many have you had since then?

Belton: I've had two since then. I tend to keep them a long time because it takes a long time, a lot of effort and money to get them set up. Once you've gone to all that effort and money, you keep them. Also, I don't drive that far. My present vehicle I've had since 1987. That's 13 years, and it still doesn't have 50,000 miles on it. I'm just about to break 50,000, and I'm not looking forward to it. I was hoping I could keep it under 50 for a long time, but it's still, of course, a minute amount of mileage.

LaBerge: But it works on the same--

Belton: No, we're going to talk about those parts.

LaBerge: All right.

Belton: They're different stories.

LaBerge: Is this a good time to end?

Belton: Yes, it is.

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VII STAFF ATTORNEY FOR JUSTICE STANLEY MOSK, 1964-2001

[Interview 9: April 5, 2000] ##

Historical Context

LaBerge: This is tape 13, interview number nine.

Belton: Tape 13. What an appalling number.

Assassination of President Kennedy, 1963

LaBerge: Tape 13.

Well, when we finished last time, we decided we would start with Justice Mosk today, but also I think you mentioned that you'd like to say something about what you were doing and your reaction to [President] John F. Kennedy's assassination.

Belton: Well, I can tell you. Everybody knows where they were that day. Of course, I was still working for Justice Schauer, that being November 22, 1963. I was in this present building, in the window office on the floor below this one, looking out on the same scene. It was a beautiful, sunny, November afternoon, as you can get in San Francisco. Justice Schauer knocked on my door and put his head in, looking very serious, and said, "I've just heard the terrible news that President Kennedy has been shot."

I said, "My God," and called home right away. My wife was home. I told her to turn on the radio and put it on a news station and hold the telephone next to the radio. Then I called the rest of the staff into my office, and we all sat around listening to the news bulletins from Dallas as they were coming in. What is Dallas--two hours time difference? So it was already a couple of hours later because the assassination was around midday. It was already a couple of hours later, and therefore he had already died.

But at first there was still mass confusion and uncertainty, and people were running around without knowing what to do or what to say. We didn't know either, so we just sat and listened. Justice Schauer came in and listened with us, and the whole staff--that office was half the size of this office--a third of this size--but we were all crammed in there sitting around my telephone, which was in the speaker mode at that point, all listening to the radio from my house.

Then the worst was confirmed, and people began drifting away. There wasn't much else to say or do at that point. Everybody had to mourn in their own way. After half an hour or so, Justice Schauer came back and said that the Chief Justice had directed that the staff be allowed to go home--it was a Friday--be allowed to go home and mourn at home. So we left early; it was something like 2:30 or so. We all left and went home and did what everybody else did in the country: spent all the rest of the weekend in front of the radio or the television set as the drama unfolded.

LaBerge: Was there not a radio here?

Belton: No. This was a long time ago. Nobody had radios in their offices.

LaBerge: [laughter] It was innovative for you to have the speaker phone.

Belton: Well, that's the best we could think of. It was an open line kind of thing. Nobody had a radio or television, so we all had to do the best we could.

Assassination of Bobby Kennedy, 1968

Belton: And five years later, we went through it all over again. I was a big Bobby Kennedy supporter, and I had a big Kennedy sign in my office starting in the early spring of '68.

The night before the assassination he was in San Francisco, right over there at the Civic Auditorium, for a campaign rally. No, it was a few days before, I think. Of course, the election--the primary election--was a Tuesday, so it could have been Monday or Sunday. It was quite soon before. It was his last public appearance before the election. I think he was here, and then he flew down to L.A. for the election itself. Yes, I think it was a Monday. Anyway, there was a political rally over there, and both my wife and I went and sat up in the stands and cheered our heads off. He came in looking young and vibrant and full of life and full of hope, and things were looking good for California. Indeed, he won California.

The next night, of course, was election night, and we were sitting at home again. I think, maybe, we didn't have a TV in those days. I don't remember, but it wasn't on TV. We were in the kitchen listening to the same radio, as it turned out--same kitchen radio. There was the big celebration in the Ambassador Hotel, and then, all of a sudden, there were gunshots all over the radio and the reporter saying, "What's happened? What's happened? Get back. Get back." Things like that. And I looked at Nancy and I said, "Oh, God, not again." All over again. It was just so appalling.

That was about 11:15 or so in the evening of that Tuesday. But I came to work the next day, and of course by then I was working for Justice Mosk, and he, too, was a big Kennedy supporter, and we looked at each other and we just about broke down. That was so sad. I left my sign up for a long time, but for a different purpose: as a memorial to both Kennedys. Well, that's enough of that subject.

LaBerge: Okay. It gives a historical perspective.

Belton: Well, it affected the justices too, you know.

Choosing a Staff

LaBerge: Yes. Well, what did you know about Justice Mosk before he was appointed?

Belton: Very little. I knew he was a Democrat. I knew he was the Attorney General. I knew he had been the Attorney General for one and a half terms. I knew that he was a very successful Attorney General and a very successful politician. He got more votes than Pat Brown, as you know: a subject that he teased Pat about for a long time thereafter. Of course, he didn't have the opposition Pat had, but it was still fun to tease him. They were very close--Pat and the judge. But that was about all I knew.

I'd never met him; I'd never even seen him except on television. I'm not sure if he'd argued any cases in person before our court. If he had, I hadn't been there in the audience on the occasion. Attorneys general occasionally--very occasionally--will argue a case before our court. If it goes to the U.S. Supreme Court, they pretty well always argue it if they can see their way to do it, because of the honor. But arguing a case before our court is, of course, much more common--cases involving the People and every criminal case, by definition. But occasionally, if it's something with particular importance, the Attorney General will do it.

Dan Lundgren has done it once or twice, and [Bill] Lockyer I don't think has done it yet, but I hope he does, because he's a good speaker. But anyway, I'd never seen the judge, and I didn't know much more than what I just said.

LaBerge: And how did you become part of his staff?

Belton: When he came on board, not being a Court of Appeal judge, he didn't have an existing judicial staff. C.A. judges have at least two staff attorneys to bring with them if they wish, and some do occasionally, but he had very different kind of staff because he had a different kind of job. His staff was all civil service, especially the people that were closest to him. They were, by definition, the highest ranked deputy attorneys general and these people are lifetime attorneys general, and they're not going to jump ship and come and work as a staff attorney for a court. They've got a career where they are.

The very top ones are not civil service. The top five or six are appointed by the Attorney General, so they go when he goes. But virtually everybody else in the office is civil service, and so they would stay on there regardless of who's the Attorney General.

So he came without a staff, and he did, therefore, the next best thing, which is the right thing to do. That is, to see what staff was available on the court that he might do well with and get along with.

Justice Schauer, at that point, had three attorneys. There was myself and the woman I mentioned, Josephine Elmore, and an annual who, by definition, had left, so we were down to two. Josephine Elmore decided to retire at that point, so we were down to one: me.

The judge needed a full staff of three, which was the authorized number in those days. He came and talked to Phil Gibson, who was the outgoing Chief Justice, whom of course he knew. Phil told him about a staff attorney on Phil's staff, Olga Murray, who was available if Justice Mosk needed her to switch staffs--because Gibson was leaving too at the same time. Gibson and Schauer both retired basically at the same time, so Gibson's staff was up for grabs.

That staff went different ways. One or two of them retired, one became a superior court judge, one or two may have stayed on, and one or two went onto other staffs. He had a bigger staff, as the chief always does. I think he had five or six in those days.

Olga Murray was available, and so the judge--. I say the judge, and yet we're talking about the Attorney General; I can't help the habit. Justice Mosk interviewed her, and they hit it off well, so he asked her to join his staff, and she did.

Then it is a little unclear. Our first annual law clerk--how the judge found him, I don't quite know. [looking in drawer]

Interview with Justice Mosk

LaBerge: Is this a list of staff?

Belton: Yes, John Hansen was his name. He was a young lawyer--again, I think, soon out of law school--and he was looking for a position as an annual staff attorney. I'm not sure if he had applied to us. You'd have to ask John if he had applied to Justice Mosk or to the chief or whomever; but he was available. The judge interviewed him, and, again, they hit it off, so he hired him.

I was technically not yet available because Justice Schauer's retirement extended for a few weeks; I think it was until the middle of September. So I was still finishing up work for Justice Schauer, but it was obvious that I was going to be available soon. So for the third position, Justice Mosk thought he would like to interview me because he asked Justice Schauer, "Who on your staff is available?" and I was the only one that was left.

I remember it clearly. It was one day in early September. I was in the library working at one of the library tables, and I looked up and there was Justice Schauer with this fellow with him who turned out to be Stanley Mosk. That was how I met him. Justice Schauer had brought him down to the library, saying, "Peter's in the library. Let's go and find him." He brought him down and said, "Peter, this is Stanley Mosk. I've recommended you to him. If you'd like to work for him, he'd like to talk to you."

Justice Schauer left us alone. Things were pretty quiet in the library, as they're supposed to be, so we had our little interview; and we, too, hit it off. Of course, he was very young then; he was 52. It seems to me very young. He's 21 years older than I am, but still, as you can see from the pictures of him on the walls when he was first appointed, he was a young 52 because he was so active.

But we hit it off well, and he asked me to join his staff when I became available, which would have been just a week or two after that. And I agreed. Olga and I joined, therefore, as the two--. In those days, we had two permanent staff attorneys and one annual, which was the common arrangement. We [Olga and myself] were the two permanent staff attorneys; John Hansen was the annual. John served his year, and then we began the long sequence of annual law clerks.

LaBerge: Were you a part of his orientation, so to speak, since you were sort of an old hand?

Belton: We weren't told to be his mentors, obviously. We were all a team, and it was a learning process that we all went through together. We had four years--well, I had four years of experience on the court. Olga had more than four because she had come several years before me, in the mid-fifties. I came in '60. She had come in '55, I think--'55 or '56. So between us, we had quite a few years of service. I can't call to mind specific instances, but I'm sure we were able to guide him in getting started as to how the court processes worked. But the court itself supported him. The chief would give him advice--and the chief's people.

He had a pretty good idea of generally how it worked. He wasn't a novice to government; he was a novice to the appellate court system. But then, he wasn't the first who was in that situation. Of course, we had to learn how he wanted to do it. All justices do it differently, and he was entitled to do it any way he wanted. So we all learned together. Basically, we learned his style, he learned what we could suggest, and pretty soon, everybody was working pretty smoothly, as I remember.

LaBerge: What was the difference between his approach, or manner, and that of Justice Schauer?

Belton: The obvious first difference was he was much younger. I'm not sure what effect that had, except he was more accessible in a way. Justice Schauer was a very distinguished gentleman, but he was a gentleman of the old school. He was serious and courteous and polite, but you always felt a slight aura of reserve around him, which was appropriate for the position, even after I'd been with him for four years. But underneath it, he was just a dear. We all loved him --you just couldn't help it. He was just that, the old school.

Uniformity of Workload and Procedure

Belton: And here was a man who was a generation younger and therefore was closer to our age, and we could relate a little bit more personally. As far as the work procedures were concerned, the work is so uniform that you can't really have a lot of big differences between the way the staffs operate, or the product would come out at different times in different ways.

LaBerge: So it's pretty uniform?

Belton: That could be overstated too, but there are certain things that have to be done, and they have to get done in a certain time. You can do them different ways, but the bottom line is things have to get out on a certain schedule; and if they don't get out on a certain schedule, you fall behind and lots of consequences occur. So the system itself imposes a certain uniformity in procedures. The court has its own internal rules. There is room for individual differences in how the justices operate their staff. I know of some, and I'm sure there's some I don't know about because I don't question other staffs as to how they do their work. But the difference relates largely to how much hands-on supervision and rewriting comes from above. The case load is pretty uniform, as I have explained. Everybody has to do about the same number of cases per year per staff, and they try and keep that even. The assignments are certainly made with that in mind: that everybody has about the same amount to do.

Over the year, some cases are easier, some are harder, some are longer, some are shorter; but over the year it evens out. You'll have some easy ones and you'll have some hard ones, so the number of hours of staff work that is necessary is fairly uniform. Some staff work faster, some work slower, but the basic requirements are fairly uniform. And that's a good thing. You want everybody to feel that they're doing their share--no more and no less.

But what happens after the product is prepared--the draft is prepared by the staff--is another question. There are some justices who spend more time working over the drafts, some who spend less time. Of course, it varies from case to case also. That's a decision that the justice makes; so if he or she feels that that's the way he or she wants to operate and is willing to spend the extra time, fine. That's their choice. But thinking back on it--and I can only speak for these two men, since I've only worked for these two men in my whole time here--their procedures were not fundamentally different. They both gave a lot of leeway to staff and kept the rewriting to a minimum as needed, but didn't go out of their way to rewrite, redraft, on their own.

On occasion, they would both ask the staff attorney to rework a passage or a paragraph or an analysis, but they didn't rewrite a lot of it in their own words. That was something that they deferred--at least in the first instance--to staff. Then if they were satisfied, they were satisfied. If not, they would not hesitate to put in their two cents--or their four cents on occasion--but that was their way. It worked out, I think, quite well. They were both very productive.

Here I'm speaking of Justice Mosk in the past tense, but it's a little complicated to have to speak of one in the past and one in the present. You know what I mean. Justice Schauer was productive, and Justice Mosk is productive.

Stance on Civil and Criminal Matters

LaBerge: How did you know how he was going to go on a case? Because that must have been different.

Belton: It was. To start with, Justice Schauer had evolved over the years too. He had evolved from more liberal to more conservative as the years went by and he aged. This is, of course, a pretty common sequence in most human beings. You tend to become more conservative as you grow older. He had written in the 1940s some very famous criminal cases which were viewed as landmarks of the liberal approach to criminal law. They had to do with topics like what is necessary to show intent to commit a crime? They were pretty strongly written in favor of the defendant. Most of them had to do with murder, and they laid down some aspects of the law of homicide for decades.

But in his later years, he became more conservative; and at the same time, the court became more liberal. I'm talking about Justice Schauer.

Liberals like Justice [Mathew] Tobriner came on the court, and the court tended to evolve in that direction. I've been through that experience.

Now comes Justice Mosk, who comes on board as the very recent chief law enforcement officer of the State of California. I said to myself, "Whoa, I'm working for the Attorney General, the man who was six years Attorney General. That's the chief law enforcement officer: he's going to be pretty conservative on criminal matters. That's what they do. He wants the criminals locked up and kept there. Maybe that'll spill over into civil matters." That was what we all expected.

Well, it didn't turn out that way. Life has a way of being full of surprises. It turned out that in civil matters he was, in fact, quite liberal, as I should have known if I'd studied his positions as Attorney General because the Attorney General does get involved in civil issues too; it's not just criminal. That's the high profile--criminal. But the Attorney General, to name one obvious thing, is enforcer of the antitrust laws. And the antitrust laws can be enforced negatively and conservatively, as people like [Presidents Ronald] Reagan and [George] Bush did; or you can enforce them more liberally, as some Democratic presidents have done--not [William J.] Clinton particularly, but some--and as Stanley Mosk did when he was Attorney General.

I won't go into his early career, but there were a number of famous examples of his taking liberal positions in the antitrust field. So I thought to myself, Well, maybe this will be a mixed bag. And indeed, it was a mixed bag in the civil field. He started out fairly liberal and quickly evolved into being one of the most liberal justices in the court in the civil field, with respect to, for instance, civil rights and civil liberties. From the very beginning, he was taking the liberal position in these matters.

In criminal law, it was a little different. He started out with--as would be expected--years of Attorneys General past inspiring him. But then he, too, began realizing that there's a liberal position in every case, and that the criminal defendant is just as entitled to have somebody

express that view as is the civil defendant or a civil plaintiff--any civil party. So he began evolving there too, at first, in fields that had to do with search and seizure, particularly.

That was a hotbed of issues in the sixties and seventies. The law of search and seizure was evolving, and he began to take a position strongly in support of the rule forbidding illegal searches on a case-by-case basis. It's an easy rule to declare, but it's a very hard rule to apply because every case is different. In almost any case, you can have a liberal position and a conservative position. What did the police officers know, and when did they know it? How much did they inquire? And all these different things. How furtive was the gesture that the defendant made? It's very ad hoc and case-by-case specific. He began evolving in that direction, too, to my surprise, quite soon.

By the time a few years had passed, he was as liberal as they come on criminal law too; and then the transformation--if you can call it that--was complete. How did I find out these things? Just by talking with him. That's how we find out everything about each other. And it's true of judges and their staff too. Either before, during, or after you're working on a case, or we're talking about cases that other judges have written, in regular staff meetings, it became clear to us that he wanted to take these positions and to express this view, and we were all too glad to help.

Staff Meetings, 1964-1973

LaBerge: Could you tell me something about the staff meetings: how often?

Belton: I'm trying to remember when externs began, because it was more formal then. I think externs didn't begin until the early seventies, so we'll talk first about the pre-extern period, from '64 to about '72 or '73. It was never a formal affair in those days. He was not one for formality, and we didn't have regular sessions. He wasn't a "meeting" person. Thank goodness.

There are bosses who are constantly calling meetings. And as everybody knows, meetings are the biggest interrupter of your schedule and waster of your time. Most people dread them, and in business, I think they're a real bane and scourge because you can spend your whole day in meetings and what have you really accomplished? You kept a seat warm. Some staffs on the court do more of that, as I understand. He has never been one for formal staff meetings on any regular basis, like once a week, as some people will do, or once every two weeks.

Instead, then as now, he will call occasional meetings of the staff, usually just with a few hours notice. He'll say, "I'd like to get together to talk about where we are on a number of important cases." We all gather in his office, around his conference table. What he did then, and still does, is he would go through the list of circulating opinions--or no, even more than that, the list of all circulating calendar memos and opinions. Some have been argued, and others not. He would go through them one by one and discuss what he thinks ought to be done, what we think ought to be done, what position we should take, and so forth on each of these cases. Not every single one that's circulating, but the majority of them, especially the difficult ones.

The way we work it on our staff is that every time a calendar memo circulates from another staff, that case is assigned to one of us to be followed--

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LaBerge: Okay, after the preliminary response.

Belton: Yes. The staff member is responsible for keeping track of all further developments: any supplementary memos circulated by the author, and indeed, if any dissent needs to be written or concurring opinion, then that staff member will draft that document. They're pretty well up on what that case's status is, what has come out, and what the issues are, and even what the other side is proposing to do, if they know. In these staff meetings, when he gets to the name of the case, maybe he'll say, "*Jones v. Smith*." The member of our staff to whom that case is assigned to track will say, "Here's what's going on in that case, and this is what I think we should do." The judge may say, "No, I think I'd rather do that," and they'd go back and forth and work out a position to take and keep.

For most cases, it's just: "We're going to keep on watching and see what to do." Then he'll say, "Well, we'll see what happens at oral argument," or, "We'll see what happens after argument, what they circulate. If they discuss that point--," and so forth. Those are the kind of meetings that we do, and did back then.

Also in those meetings, he will sometimes ask us our opinions on how he should vote on petitions for review that are pending, which of course are much more short-term items. He'll say, "On the next conference, these are some interesting cases that I'd like to talk about." Then he tells us what the facts and the issues are in cases that are pending on review, and we discuss with him what would be a good position to take, and why, and so forth. We reach some sort of consensus.

But as I said, many times--it's sort of a standing joke--he'll say, "That's very interesting, and I appreciate all your input, but you have to understand this is not a democracy." [laughter] He'll say, "It's one man, one vote, and I'm the man." Sometimes we would band together, all of us, urging him desperately to vote yes or vote no, and he does the exact opposite; but at least he has the courtesy to tell us in advance. He says, "I've heard all your views, and I'm sure they're well intentioned, have been sincerely presented, and are eminently plausible, but I'm not going to do it. Again, this is not a democracy," with a grin. And we all say, "You're the boss."

That was until 1973. In '73 or so we began the process of taking on externs. I'm not sure when you want to talk about that. It's really a different subject, but I'm raising it now because the meetings did change.

Law School Externs, 1973-1989

LaBerge: Well, let's go with that right now, then.

Belton: Okay. Let's see. How can I give you the history of the extern program? The extern program began because in the early seventies the court began to feel itself overwhelmed by the number of petitions for review that were coming in. They were then called petitions for hearing. It's the same thing. The number constantly increased. In fact, it still increases. And it increases for two reasons:

One, the population of the state continues to increase, and the more people who live in the state, the more litigation there is; the more litigation there is, the more petitions for review there are.

The other reason is that the Legislature frequently adds positions to the Court of Appeal and increases the number of the Court of Appeal justices in the state. When I came on board, I think there were 48 of them, and now it's--what?--87 or 90-something. Pretty soon there's going to be 100 of these people.

The reason the Legislature does it, is (a) because it can, it doesn't require a constitutional amendment; and (b) more importantly, because there is a need for them because of what I said a moment ago: as the population increases, the number of trials increase; and if the number of trials increases, the number of appeals increase, and all the appeals, except death penalty, go to the Court of Appeal. Everybody has a right to appeal to the Court of Appeal.

So the Courts of Appeal--and I really feel sympathetic for them--were getting overwhelmed. I think they're still overwhelmed, in my opinion, but they were certainly getting overwhelmed then. The Legislature responded by adding justices to the Court of Appeal, so that produced that many more C.A. opinions. In turn, each opinion had a disgruntled litigant--the person who lost in the Court of Appeal. He would petition our court for a hearing, so the petitions increased.

What the Legislature could not do is, it could not, and cannot, expand the number of justices on our court, because that's fixed by the Constitution at seven in the present time. It used to be three, then it was five, now it's seven. It's been seven since the last century--since the 1880s. Since they couldn't add to the number of justices, they began adding staff. We got a fourth staff attorney at some point. It was in 1982.

But in '73, the court was really left to its own devices to figure out how to solve the problem of this great influx of petitions for hearing, as I'll call them because that's what they were called then. How they had been handled until then was, we did it--the three regular staff attorneys.

The three staff attorneys worked not only on the draft opinions, but also wrote what are called conference memos, which were the memos written recommending that the court either grant or deny a petition for hearing. But conference memos could not be delayed, because they had strict time limits in the rules and the statutes. When you petitioned for hearing or review in

our court, the court has to decide the petition within two or three months. You need that finality because as long as that petition is pending and undecided, the appeal is undecided.

The Court of Appeal may well have reached its conclusion and filed its opinion and judgment at the Court of Appeal level, but a petition for hearing in this court puts the matter into abeyance, and nothing happens until we decide whether to grant or deny the hearing. That might mean that somebody is or is not going to jail, or is or is not going to get paid a large money judgment, and time becomes important. Therefore, the petitions for hearing had priority. They were not the most important aspect by far of our work, but they were the only ones with short time limits--and they still are--so we had to deal with them first.

Setting Up the Program

Belton: That means that when it was just the staff doing them, we wound up giving them priority in our time, and the regular cases of the court--the ones that were the most important, visible output of the court--got left behind. And that was bad too, so the court decided to do something about it. Various people put their heads together, and the judges discussed it and decided to undertake a program called externs--law school externs.

They could have called them interns, it would have made a little more sense. They were external to the law school, but they were internal to us. It's like interns in all kinds of fields of public life. They have, as we all well know, White House interns [laughter], who shall go unnamed. And there are interns in other fields. For instance, when I listen to Michael Krasny's program "Forum" in the mornings on public radio, I hear they have interns in the news programs. They have interns in all kinds of businesses--usually public-related.

These are young people who come and work for no pay but lots of experience, and are glad to do it. They're like specially trained volunteers, I suppose you could say. They get the experience, and the institution gets the benefit.

They have them in other branches of the law too. There were interns or externs in the district attorney's office, the Attorney General's office, city attorney's office; so we said, "Well, why not for the Supreme Court?"

These were law school students, and the law schools were delighted when we set up the program. We contacted the local law schools in the Bay Area, because this was going to be just for one semester each, so it's not something you'd bring somebody all the way from a distant law school. It's pretty well limited to the Bay Area law schools; but we've got quite a few Bay Area law schools, so there was no problem of getting bodies for this project.

The way we set it up was, we told the law schools, "You beat the bushes in your class for good students who are interested in coming to work for the court for one semester, at no pay, but you will give them credit for one academic semester. They, unfortunately, will have to pay you as if they were there." The law schools loved it. They got the money, but they didn't have to teach the kids. They got them off their hands for a semester and got some reputation and

glory in the process. The law schools agreed, and began advertising in their law school bulletin boards, and however else they communicated to the students, that this program was up and running; and the students began applying in pretty significant numbers.

Interviews and Work

Belton: We would always have to interview them. It did create work for us in two respects. First, we had to interview carefully and make sure we had the best of the bunch.

The number of externs per staff varied. The average was maybe three. Some staffs had more, maybe one had less. We went up to four at one point. But four got to be unmanageable, so we returned to three per staff. That's 21 for the court; and that's not a large number for the number of law schools in the Bay Area, so we had to do some very selective interviewing and hiring. They all had to be screened in person. Olga Murray and I formed the hiring committee, and we would jointly interview the applicants for externship.

We got to be pretty good at it after we did it for a while. We then would rank them in order of preference and talk to the judge about them. If they were really good and we wanted him to meet them, we would bring them in to him; and if we didn't think they had a prayer, we didn't disturb him. But anybody who looked like a distinct possibility, we would take into him, and he would be gracious, as always, and chat with them for a few minutes, just to get the feel; and they could say they've spoken to Justice Mosk.

LaBerge: Were you looking for good writers?

Belton: Primarily. That's what the job entailed. We explained to them very clearly, "What you will be doing is one thing, and one thing only, and that is, you'll be working on the petitions for hearing. You won't be working on opinions. The petitions for hearing will come in on a constant stream, and you'll be expected to take each petition that's assigned to you and do the research and study the facts and the issues and the law and write a memo of, oh, three to five pages, called a conference memo, which you will be writing for Justice Mosk. He will have to see it first, and then it will go to all the other justices; and it'll be the basis of discussion at the weekly conference at which the court will determine whether to take the case or not."

We explained to them that it's important, because that's how the court decides what it's going to decide. It creates the whole court docket. But it was an art that very few of them possessed because law schools, unfortunately like many schools today, don't give much opportunity to students to do any individual writing. It's a lot of learning the rules by rote--the basic principles of so-called black letter law--which means the basic guiding principles of the law. That's fine. You have to know them too, but you don't get much chance to write. Bit by bit, law schools are now offering more opportunities for students to do research and writing, but back then there were virtually none. Worse yet, they had not had much writing experience in college, either--or high school, or grade school, which is where I learned to write. Grade school is where I first started doing what creative writing I did, and that's where you lay down the

techniques and principles and create the love of it. But if you wait until college, it's too late. You should get them while they're young.

So these students were not very well prepared to write. They were all very bright by definition. They came from the best schools. On our staff we required that they have at least one and a half years' experience in law school. In other words, we didn't take them until they were in the spring of their second year. We preferred students who were in the third year because they would have had that much more legal experience. They did know how to read legal documents and how to do research. That was never the problem. The problem was, having gotten the research done and the law straight in their minds, they had to lay it all out in the memos. And the memos had to be short, so they had to write clearly and concisely, which is very hard for these kids to do.

Therefore, we had to do a lot of editing. Each of us supervised one or two externs. And we found we were spending a lot of our time rewriting and editing the work of the externs. In some of it there wasn't much to be done; some of it we had to do all over again. Either we sent it back to them, or we did it ourselves if it was hopeless. But mostly it was just vigorous editing. That's why I was called "the Slasher." I showed you my cup.

LaBerge: You did. [laughter]

Belton: It was the externs who called me "the Slasher" because I would slash their memos to ribbons, since we couldn't send them out that way. Eventually, that contributed to the demise of the program. We found ourselves running a law school--at least, running a legal writing school, and we didn't want to run a legal writing school. Occasionally, there'd be an extern who got it right from the beginning, and we were so happy with them. But mostly, though, it was on-the-job training and they would learn as they go. The depressing thing, over and over again, three times a year, was when they finally learned how to do it, their semester was up and they had to leave, and we had to start all over again. It took all of them at least one month to even get the rudiments of it, and then two months to get the hang of it. By the time three months were over, which was the end of their term, they were pretty good, and then they said bye-bye. It was pretty depressing.

Ending the Program

LaBerge: So how is it done now, if that ended?

Belton: I'll give you the history. That went on from '73 to--let's see--the early nineties, [looking through papers] late eighties. I'm looking here at the extern list and the dates of service. I don't see anybody later than the late eighties on our staff. The high point was the seventies and eighties, so it was maybe 20 years, a little less. For us, on our staff, we had them from '73 to '89. During that period, the other staffs did the same, so it was a thriving business.

The law schools were in great competition to get their students placed in the extern program; and if a particularly good extern came along--a good prospect--and interviewed with two or three judges, the judges would be in a race to hire them. Somebody good would be snapped up by another judge, and you'd say, "Oh, nuts, we missed that one. We should have offered her a job right on the spot before she left the room!" Somehow it all worked out and everybody got their fair share.

But then the process evolved, because the number of petitions for hearing--and after 1985, the petitions for review--continued to increase. The population continued to increase, the C.A.s continued to grow in number, and the problem just got worse and worse. Although we caught up with it in the seventies, by the mid-eighties we were beginning to fall behind again. The statistics in the Judicial Council [of California] Annual Report show the number of filings in this court climbing from 5,000 to 6,000 to 7,000 filings a year of petitions. For a while, we just added externs. We started out with--what?--two. Then we went to three, then we went to four. When we got up to four, we said, "Now, this is madness. We can't supervise four externs."

We didn't even have space to put them in--didn't have rooms and desks to put them in in this building; and it was not much better while we were in Marathon Plaza. By the time we moved from Marathon Plaza, this program was in decline. I don't know where we put them in this building. They were in cubby holes. They were two or three in a room. They didn't complain because they were glad to get the experience.

I'd better talk a bit more about the heyday. We treated them very well, I think. Most of them really enjoyed their time here. A number of them have stayed in touch ever since, even though they were only here for one semester, years ago, they've still stayed in touch. Not all; we've lost track of many, but a number of them have stayed good friends, in fact.

A few of them went on to become annual law clerks on this court, and a few of them even went on to become permanent law clerks on this court. They did their turn as externs, they went back, they finished school; they went out and they practiced a year or two, and they decided they didn't like it. They came back and said, "Hey, remember me?" And if we remembered them with affection, they were given good opportunities, if we could, on this court because we knew what they could do and they knew what we did. For example, Jake Dear started out as an extern for us, then became an annual for us, and then a permanent law clerk for a couple of other judges, and he's still here, now on the chief's staff.

Weekly Staff Conference

Belton: While they were here, then, we treated them that way, and we involved them in all our staff activities. In fact, the weekly staff conferences got to be pretty routine, pretty regular, instead of being held just when the judge thought we needed them. We would meet every Tuesday afternoon for a couple of hours--everybody. When there were four externs and four of us and the judge, we had to move a lot of chairs. The room filled. The conferences always began at one o'clock Tuesday afternoon, and ran for two or three hours.

What the judge would do is he would go through the entire list--not just the interesting cases, but the entire list of cases to be voted on at the Wednesday morning conference of petitions for hearing--every single one of them. That's why it took so long. He would say, "Here's the name of the case, and here are the facts," and he'd summarize the facts very efficiently. He'd say, "Here are the issues, and here's the law," and then the entire room would get into a debate about whether the judge should vote to grant or deny.

It served a number of purposes. One, it kept us up on what the other staffs were doing because these were memos, by definition, that the other staffs had written. We didn't review our own cases. Let's say at the height of this period that we had maybe 15 petitions assigned per week to each judge. We would divide that number among our externs as best we could. Well, 15 may be a little high--somewhere between ten and 15. It varied. But those cases, of course, they knew about because they'd worked on them, and we knew about because we'd edited them. What we didn't know about was what the other staffs were doing, what cases were assigned to them.

Every week there were some that were controversial or funny or exciting or challenging. The judge would lay out all the cases coming from the other staffs that were worth talking about and that the judges were going to vote on in conference. We would then debate around the table. Everyone was invited to put in their two cents. No idea was too dumb, we just wanted to hear from everybody. We'd debate as to whether the judge should vote to grant or deny. He would listen and lead the debate.

When it was all said and done, we'd reached a consensus in most cases, and that's when he would repeat sometimes, "There's no democracy here. I hear what you say, but I'm not going to do it." [laughter]

But we took notes on the interesting cases, and they were very lively meetings. Sometimes they were quite funny. Some of the facts were--you can't imagine the messes that people get into in real life. The facts of some of these cases are just beyond belief. Especially the dumb-criminal cases. There's a lot of dumb criminals. I guess that's why they're criminals. The classic case is the robber who goes to stick up a bank, shoves over a note, demands the money, and then runs out. But the note he shoved over is written on the back of his deposit slip, with his name and address on it. That sort of thing. Those always got a good laugh.

But some were very serious and very difficult and would take quite a long time to debate. We would pull books off the shelves, and the debates sometimes got very heated--very heated. It was very lively. It was a real two hours of knock down, drag out. It was exciting. I miss them. It was two hours out of your week that you didn't have to do real work, but it was very interesting and entertaining and informative. After conference the next day, the judge would report to us on the more important cases that we had discussed the day before on the Tuesday afternoon. If we had gotten all worked up about *Jones v. Smith*, then the next morning he'd say *Jones v. Smith* was granted with four votes and here's who voted; that way we could get a closure on the subject.

That's the way it worked then. We had three sets of externs a year, because there was the spring, summer, and the fall semesters. Well, not in the summer. The spring and fall were the regular semesters. Well, some schools were on the quarter system, and they had literally three quarters: spring, summer, and fall. Some schools were on the semester system, and they just

had two: spring and fall. So summer externs were harder to come by because if they weren't in school, most of them took the opportunity to get a job in a law firm to make money, which they desperately needed to pay their tuition. You could get good money in those days as a summer extern in a law firm in San Francisco--more money than these kids had ever seen--most of them. Most of them really needed the money and didn't want to apply for externships. As a result, the summer externs were either kids who were independently wealthy; or desperate for the exposure; or who figured they had a better chance in the summer of getting the offer, which they did because we had less choice; or who wanted to go on and be teachers, law teachers, and wanted as much exposure as possible, and they figured they'd always be poor, so what difference would one summer make? And for other reasons. Of course, we had different varieties.

Thank You Lunches with the Justice

Belton: So they would come, each of them, these groups. We'd have one group in each of these three semesters. At the end of each of these semesters, the judge would take us all out to a nice lunch. All the staff got a free lunch, and the externs who'd done all the work. This is all they got in the way of compensation. We paid their travel and parking, but beyond that--beyond travel and parking--there was no money; and they were out of pocket because they had to pay the tuition, which for some of those schools was \$7,000, \$8,000, \$9,000 per semester. A lot of money for these kids. So we'd go out and have a nice lunch.

LaBerge: Are you thinking of one in particular? I see you smiling.

Belton: No.

LaBerge: Well, I'd love to have an anecdote.

Belton: Well, back then there was a restaurant a block away from here called Rocca's. It was an old-fashioned Italian kind of place--you know, dark inside with big mirrors that had a filigree pattern on the glass. There were heavy, gilded chandeliers and heavy, velvet curtains, very dark and quiet, and white table cloths, and all the waiters were over 60, and they all were named Remo. But it was very close by, and it was very traditional food--just very traditional food, nothing modern. This is long before the arugula revolution. We're talking here, Caesar salads and, oh, all the classic American and Italian dishes. The judge would take us there quite often because it was nearby, it was convenient, and they could handle large groups.

But it was also frequented by City Hall politicians because it's just across the street from City Hall too. This was in the day of real Irish-Italian politicians running City Hall--mayors and supervisors. The judge knew them all, of course, because he was then--as he still is, but even more then--active in Democratic politics. He got to know everybody in the field, from Governor Pat Brown on down, and they all knew him. So we would go there and he'd have his brood with him. He'd be like Mother Hen with his brood of little chicks, some of them looking very young.

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LaBerge: Okay, so the lunches were interrupted with--

Belton: Yes, the judge would always introduce everybody to this or that politico as our Caesar salad was getting warm or our pasta was getting cold. That was fine. And of course, the judge would tend to tell the same jokes each time, and we all got to know them, but that was fine, too. They were new jokes for the externs. And they were all very impressed by this process: they met the mayor, they met the lieutenant governor, they met all kinds of people like that, and that was fine.

As I say, we couldn't pay them any money. We didn't have any money in the budget. The least we could do was make them feel part of the staff and part of the process and valuable, which they were. And we got to meet a lot of interesting kids that way.

The Central Staff

Belton: But to wrap up this part, because it's getting a little long, the process was evolving continuously, as I say. It continued to evolve, and the number of petitions continued to increase, and it began to overwhelm even the expanded staff using the externs. So in the early eighties, the court conceived of another solution of the problem, and that was to set up what was called the central staff. The central staff was a staff of attorneys--not law school students, but people who had graduated from law school and passed the bar exam. At first, they were mostly annual attorneys who were fairly recently out of law school and were only going to come to the court for one or two years, under the guidance of a director who was a permanent staff attorney on the court with a lot of experience.

They began assigning petitions for hearing to that special staff, and the staff was created to deal with it. Again, we drew inspiration from other courts. I think there was something similar to it on the Ninth Circuit Court of Appeals, and the state Courts of Appeal had used various versions of it for different kinds of projects. For instance, petitions for writs would go to a C.A. central staff--not a big one--the writ attorney, instead of going to individual justices. Everybody was experimenting with ways of doing that.

We decided it was worth a try too, so we set up this procedure and hired some people and began assigning the petitions for hearing to the central staff. At first, there was just one central staff, and they did mostly criminal cases because that was the biggest demand. There were more of those than anything else in the way of petitions. That's all they did.

They were responsible to their director, who was a senior staff attorney, but not to any individual judge. When we wrote a memo, it was signed by Justice Mosk, although the initials would be that of the extern. But in the case of the central staff, it was signed by the central staff attorney, and everybody realized this had not been through the hands of a judge. When the judges acted on them, it was the first time they'd had the opportunity, and they took that into

account. But a central staff conference memo was like any conference memo: it reviewed the facts and the law and recommended whether to grant or deny.

This practice was experimental at first, and we tried different ways of doing it. It looked like it was going to work quite well. Indeed, it has taken root very vigorously, because after a while we created two central staffs: one for criminal cases and one for civil cases. Then we began recruiting people who would stay on a permanent basis, not just annuals. First, we went to a mix of permanents and annuals; and then eventually the ratio changed, so now most of them are permanent. I think they have one or two annuals, but the majority is permanent.

Then they increased the number on these staffs. They continue to grow because, since it worked and the problem continued to grow, too, the court went back to the Legislature in a series of successive sessions and asked for more funding for the central staffs and got it. They've added to the number of central staff attorneys, and now there is--what?--30 of them on the two staffs together. There's about 15 on each, give or take. There are at least the 30 central staff members, and most of them are permanent, and they're not answerable directly to any judge.

Now, there is a judge who supervises each of the central staffs, but that's really only for emergencies. The director of each central staff is the person who hires and fires the personnel, and supervises the workload.

LaBerge: So for instance, Justice Mosk's staff now doesn't even look at any of the petitions for hearing?

Belton: That's right. At the same time that the central staffs were getting into the business, we were getting out of the business. They began to assign us less and less. The reason I'm telling you about the central staff, among other things, is because it brought about the demise of the extern program. We needed externs less and less, and we really were very reluctant to bring the kids out of school, make them pay tuition, and not have enough for them to do. That wasn't fair. On our staff, we reasoned that if we can't keep them fully employed and learning, we're not going to do it. We'll just skip it.

We were the first, I think, of the staffs to completely drop the extern program, which would have been at the end of the eighties. I think '89 was the last extern we had because at the same time, beginning in 1982, we expanded our staff from four to five--four to five attorneys--because the Legislature authorized an additional staff attorney for each justice. So we had five at that point who were available in case there were petitions. And at first, we still did some petitions for review. At first, they would assign us one or two or three a week, and that was okay because we had less petitions assigned and more people to do them. But with that one or two or three a week, it was not enough. Well, one or two would not have been enough for even a single extern, in our opinion.

That's partly because we used externs only for writing conference memos. Other staffs used externs in different ways and could justify keeping them on even as the petition flow dried up. Other staffs used externs, I'm told, to do legal research of all kinds: background research on an issue or specific research on an issue in a case. For example, not only what is the law of eminent domain in general on this topic, but what eminent domain rules should apply to these facts, and how should they apply?

We thought that was getting too close to the opinion-writing process. The other staffs also used them to do cite-checking and proofreading. We didn't do that for two reasons: one, that's not much fun, and I don't think it's fair to a student to make him come here and wind up doing cite-checking and proofreading. Two, we couldn't trust them--I don't mean that in any negative sense--but the ultimate responsibility for the correctness of the citation or the proof was ours alone. If you asked somebody else to do it, and you didn't double check it and something slipped through, we took the blame. And if we did double-check everything, what have you gained? You haven't gained anything if you do the same thing twice. So we didn't use them for that.

I don't know what all the other staffs did. Some certainly used them. And cite-checking is a lot easier now than it used to be because of computers. You can do a lot of cite-checking on computers. In the old days, you had to go downstairs to the library and pull a book off the shelf and look up the page and look at the name and put the book back on the shelf. And in some opinions when you had hundreds of cases cited, it was a big job. It still is.

The other staffs, as I say, used them for these secondary projects. We didn't think that was fair, so once they began reducing the number of petitions for review assigned to the individual justices, we decided, Okay, we're out of here--regretfully, but it was a necessary step. We took no more externs.

All staffs diminished dramatically in the number of externs. Some of them have kept externs on and still use them to this day. I cannot imagine what they do. I have a feeling that we're not quite the only staff that doesn't use externs, but there could well be four staffs that do use externs to some extent.

LaBerge: But obviously it's the individual justice's decision. It's not a court decision whether to use them or not.

Belton: Sure. The court doesn't care. It doesn't cost them any money. As long as we can find space for them. And knowing that, they designed space for some externs when they designed this building. The architects were told, "Include several rooms here and there for externs." They did, and that's where they are; but not any more for Justice Mosk.

LaBerge: Now, I'm looking at the time. Is that a good place to stop?

Belton: Yes.

The "Mosk Doctrine"

[Interview 10: October 12, 2000] ##

LaBerge: Well, Peter, today we thought we'd go into specific cases of Justice Mosk's--some of his most significant and, possibly the "Mosk Doctrine." That's something we haven't talked about: the

role of the state Supreme Court versus the federal, and when the state Constitution will take precedence. Would that be a good place to start?

Belton: That's a doctrine--if it is a doctrine--that wasn't planned originally to be a doctrine of his. And it really isn't his doctrine. It developed in the cases as the relevant issues arose. So the most we could say is that in certain cases, as time went by, he developed this position and has adhered to it steadfastly ever since.

LaBerge: When I talked to him, he talked about--oh, reading opinions, I think, of Justice Hans Linde in Oregon, who also had a similar outlook.

Belton: That's true. Justice Mosk was not the first to take this position by far, and he never claimed to be. There were others who had preceded him, such as Justice Linde and some professors in various law schools who had written articles taking that position. Indeed, Justice [William] Brennan of the United States Supreme Court had made that clear, too. There never was any doubt about it.

Belton: [tape break] We can explore it. I'm sure you already did.

LaBerge: He did explore it to some degree.

Belton: Okay. Well, go ahead.

Death Penalty

LaBerge: How about the issue of the death penalty?

Belton: Are we through with the--?

LaBerge: No, we aren't through with the "Mosk Doctrine" [laughs].

Belton: Well, the death penalty is a different issue. On the death penalty, his position is pretty clear. He's expressed in a number of concurring and dissenting opinions that he does not favor the death penalty as a personal matter, but that he will enforce the law as written by the Legislature. The result is that he would lean towards a strict view of the issues in favor of the defendant, and would be quicker to find than some of the other judges on the court that errors in death penalty cases are prejudicial.

There was a long stretch of time after the end of the Rose Bird court and the beginning of the successor courts when this court affirmed virtually all the death penalty cases that came before it. Often, of course, they found errors but the majority held, they were not prejudicial, and Justice Mosk quite often would disagree with that position in dissent and make his views clear.

On the other hand, he has authored a number of death penalty opinions that do affirm the judgment, either because there's no error or because the errors are not prejudicial. So he does not have a closed mind on the subject, or an automatic position--he just has a preferred viewpoint.

All judges have that. This is not an issue on which many people are completely neutral: some people favor it, some people oppose it. But he's not like the justices on the United States Supreme Court in the past--[Thurgood] Marshall, for instance--who would vote against every death penalty judgment as a matter of principle--would always vote to reverse, because he thought the penalty was unconstitutional. Justice Mosk certainly does not do anything like that. He has authored numerous affirmances of death penalties, and has concurred in numerous affirmances of death penalty judgments.

State Constitutionalism

LaBerge: Well, to tie it in with the independent state grounds theory--let's talk about People versus Anderson.¹

Belton: People v. Anderson, of course, was a decision by then-Chief Justice Donald Wright, which held that the existing death penalty statute in California at the time, which had been enacted some years earlier, was unconstitutional under the California Constitution--the cruel or unusual punishment clause of the California Constitution. Justice Mosk was simply one of the justices who concurred in that decision. It was a six to one decision, as I remember, and he was one of the majority.

But it certainly expressed his view, which he made explicit in many cases after that one, and maybe before, that the California Constitution is a document, as it is said, "of independent significance." This is a position to which he has adhered throughout his entire service on this court: that the California Constitution should not take second place to any other document, including the United States Constitution. I could go into that at some length, but he's written about it expressly, and still does.

LaBerge: Do you want to go into it?

Belton: Well, the doctrine is pretty well known. It's what's called state constitutionalism. That is to say, each state has a Constitution of its own, and the doctrine holds that each state Constitution is the document that should be the first referred to when a constitutional challenge is raised in the state courts of that state. And only if the statute that's challenged is found to be constitutional under the state Constitution, should you then consider whether it also violates the federal Constitution.

1. People v. Anderson (1972) 6 Cal. 3d 628.

The federal Constitution, of course, binds all the states to the extent that the federal constitutional law prevails, which is not in all fields, but in those fields where it does apply. There are certainly many similarities between the state Constitutions and the federal Constitution, but there are also significant differences. Most of the state Constitutions, including California's, are much longer and more explicit than the federal Constitution. They are both younger and older than the federal Constitution. That is to say, each of the original 13 colonies which became the first 13 states had Constitutions of their own, which they adopted before the federal Constitution was ever dreamed of. This is not generally known, but it's true: the federal Constitution wasn't adopted until the constitutional convention in 1789 and the years following for ratification, but all the other 13 states had Constitutions by then.

Secondly, which is also not commonly known, many of the state Constitutions that were adopted later, because those states came into being later--like California, which didn't come into being until 1850--modeled their Constitutions expressly on other state Constitutions, not on the federal Constitution. There's no shadow of a doubt that the California Constitution was modeled on the Iowa Constitution and the New York Constitution and a few other state Constitutions from the east, not on the federal Constitution. The provisions are very similar and it is clear where they came from. They don't owe much to the federal Constitution.

They should not be given second place; they should be considered first. Now obviously the federal Constitution is the overarching document that the states cannot depart from: if a state Constitution permits a certain law but the federal Constitution prohibits it, then it's prohibited. But if the state Constitution prohibits it, that's as far as you need to go: you don't need to kill 'em twice.

That is a position that Justice Mosk has taken consistently, and Anderson was an example of it; but there have been many, many since and it's still a very living doctrine. [tape break]

LaBerge: I'm going back to some of the early cases. I have some things in chronological order and maybe you could comment or just say if you don't want to comment. Starting in 1966--

Belton: [whistles]

LaBerge: And you might have some more. Mulkey versus Reitman,¹ I'm just thinking of that one-- because you started working for him in 1964.

Belton: Yes, but that wasn't a Mosk opinion.

LaBerge: It wasn't a Mosk opinion, but he was part of the majority.

Belton: Well, there have been hundreds. That's more than I can recall.

1. Mulkey v. Reitman (1966) 64 Cal. 2d 529, affirmed, Reitman v. Mulkey (1967) 387 U.S. 369.

Justice Mosk's Reelections

LaBerge: Okay. How about--this is not even an opinion--could you comment on the speculation that Justice Mosk might have run for U.S. Senate in 1970? Did you know anything about that?

Belton: No, I didn't really know any more than the newspapers did. And the reason is very simple. I might as well make the point here, that Justice Mosk always kept, and still does, his private life, and particularly his political decisions, strictly personal. As much as we're all one big family on the staff and as much as we take each other into our confidences--and he certainly takes us into his confidence on many things--he's always drawn this unseen line, which we respect, between what we do in the court and what is his private life or what he wants to become or what his plans are in that regard.

A good example--I don't know if you were going to get to it--has been his decision to run for reelection on several occasions. He's had several terms now, and each time--every 12 years--there has been rampant speculation in the press and elsewhere whether he will run or he won't run. But we are never told by him whether he's going to run or not.

I may have touched on this before, but it's always an interesting cliff-hanging experience [laughs], because we just don't know. People assume we know, so friends and press call us and ask us, "Well, is he going to run or isn't he?" And we don't know. We tell them that, and it's the truth: we find out when they find out.

There have been some very dramatic examples of that. I'm not going to be able to remember which election this was, because he has run several times. Let's see, last time he ran was 1998. Isn't that right? Yes, so 12 years before that would have been '86. That was a big election, because that was the year there was the campaign against Chief Justice Bird and her fellow justices, and he was on the ballot that time. So many people wanted to know whether he was going to run or not.

We found out on the last possible day. We came to work, and he had arranged to put copies of the press release in which he announced he was going to run, one copy on each of our desks. So we knew the same time the press knew and not a moment sooner, and we respected that. That's true therefore, also, of the speculation that he might run for the Senate. There was an open seat, and I know that some members of the Democratic party had urged him to do so and he might well have been interested in it. He always has had an interest in politics--usually from the spectator point of view. But he also knew many politicians, and still does, and has always taken a deep interest in politics.

I'm not sure how serious he ever was. That would be something you'd have to ask him. All I know is that there was speculation, and we were as intrigued as anybody because it would have affected us pretty dramatically if he'd gone from the court.

Loss of Consortium Doctrine

LaBerge: Okay, I'll go back to some cases: Rodriguez versus Bethlehem Steel.

Belton: Well, Rodriguez v. Bethlehem Steel¹ was one of the few cases in which my experience with my disability has played a role, in the sense that it has enabled me to bring to the case a deeper understanding of the issues based on my personal experience.

This was a case in which a young husband was gravely injured while working for Bethlehem Steel Company. As I remember it, a large steel pipe fell on him and broke his neck and rendered him a quadriplegic. He was still in his twenties. He sued Bethlehem Steel, his employer, on various grounds of liability. The interesting part of the case, though, was not that, but the fact that his wife, also in her twenties--they'd only been married a few years--joined him in the action and filed her cause of action for what is called loss of consortium; that is a Latin word representing a very ancient doctrine that says that a spouse--originally just a spouse--a spouse suffered a loss when his or her spouse was gravely injured, through the loss of many aspects of their marriage. For example, loss of companionship, loss of sexual contact, loss of support--physical and emotional support--depending, of course, on the degree of the injury to the injured spouse.

The doctrine simply recognized that a married person does not live alone, but lives with another person with whom they may have many different kinds of contact and interaction and support, and that all these connections can be damaged or severed by the accident. It's not just the injured spouse who has been hurt, but the non-injured spouse has been indirectly hurt through this experience.

The trouble was that this was a common law doctrine that had not been recognized in California, and indeed had been rejected in several earlier decisions of the California Supreme Court. The issue before us that was particularly interesting to me was whether we should overrule those decisions and adopt the doctrine of loss of consortium in California as a common law matter. The court had the power to do that because it was a common law doctrine and there was no statute forbidding it. It was simply that no court in California had accepted the doctrine, and indeed several decisions, as I say, had expressly rejected it.

Well, in 1974 I had, by then, been married since 1959, and was living with my wife and children. I was able to think about the case in a more enlightened and understanding way than someone who had never had the experience. I was able to appreciate more fully the fact that an injury to me would affect my wife deeply. Of course, one adjusts and accommodates to disabilities. I'd been doing that--we had been doing that--for many years. There was the difference, of course, that in my case I was disabled before we were married, whereas in Rodriguez and in similar cases, the disability occurred during the marriage. But I was still able, I think, to bring an understanding to the case from my personal experience of how deeply that might affect the non-injured spouse, so I took a personal interest in the matter.

1. Rodriguez v. Bethlehem Steel (1974) 12 Cal. 3d 382.

The case was assigned to Justice Mosk in random fashion, as all assignments were made. It wasn't assigned to him because of me; it was assigned simply because he was the next person in the rotation for assignments. But it was an obvious case for me to work on, and I threw myself into it.

I did a lot of research, and found that since the last decision of the California Supreme Court rejecting the doctrine--which was some decade or so earlier, I don't remember exactly--the law in the other states had changed quite dramatically. Many states had adopted this doctrine since we had rejected it, and the number of states favoring the doctrine now was much larger than the number of states resisting the doctrine, so there was clearly a strong movement in that direction in the common law of the nation.

There were also a number of law review articles which supported the doctrine with persuasive justifications, and the reasons for rejecting the doctrine that we had discussed in our earlier decisions were no longer persuasive. I won't go into all the details now! You can read the opinion. But it was a typical case where the common law had evolved and it was time for California to reconsider the question. Enough time had elapsed since we had last considered and rejected it; enough changes had occurred in the common law of the nation that it was justifiable to reconsider it. Therefore I drafted an opinion for the judge that laid out the evolution of the common law in the intervening years, that analyzed each of the previously given reasons for rejecting the doctrine, and found them to be no longer persuasive--and concluding, therefore, that California should join the majority view that had developed in the nation and accept the doctrine as part of the common law of California, with respect at least to spousal loss of consortium.

The judge approved of this view, and we put out an opinion that drew full support from the court; I think it was unanimous. It held that the spouse of an injured worker has the right to bring an action for loss of consortium in California. The case was important not only for itself--for adopting that rule as to spouses--but it opened up the whole question in California of how far the doctrine should extend. For example, should it extend so far as to permit a claim for loss of consortium by a child when the parent is injured, or conversely by a parent when the child is injured? And in ensuing decisions, that were not in fact authored by Justice Mosk but by Justice [Mathew] Tobriner, the court took those steps. Now in California a child or a parent likewise has a claim for loss of consortium.

Of course the next question was, would it extend to other family members--siblings, grandparents, grandchildren, uncles and aunts? The court eventually drew the line at that point, holding that these relationships were too remote to justify the doctrine, too remote to support the common law theory in those cases, so that now in California the doctrine is limited to spouses, children, and parents. But that's still a large number, and such claims are quite often filed. It all sprang from the Rodriguez case.

LaBerge: Well, there's another case we are not going to talk about, and that's In re Marriage of Carney.¹ because we're going to refer researchers to your paper that will be in the appendix on that, but it also came from your own experience.

1. In re Marriage of Carney (1979) 24 Cal. 3d 725.

Belton: Do you want me to at least summarize what the holding was?

LaBerge: Sure.

Belton: Okay. The holding In re Marriage of Carney was that disabled persons cannot be deprived of the custody of their children on the basis of stereotypes about their fitness as parents simply because they are disabled. The court in a custody case must look beyond the disability of the parent to determine whether the best interests of the child would be served by giving that parent custody despite the fact that he or she is disabled. That, too, is a case that has had repercussions and consequences.

That was a case in which California probably was one of the first in the nation to so hold. Now other states have followed it in their law of custody, also. It hasn't given rise to a broader rule along those lines, as Rodriguez did, but it certainly has been followed in other states, which is equally important.

LaBerge: In cases like that, do people from other states call you for advice?

Belton: No, they just read the published opinion in the bound volume and if they're persuaded by it, they will cite it, and rely on it if they're really persuaded. It's just like any other found case in a bound volume, published opinion.

Search and Seizure

LaBerge: I don't have the same list as you do before you, but how about People v. Brisendine?¹

Belton: It isn't even on my list, but I know what that was about. That was a search and seizure case.

LaBerge: Yes.

Belton: That was just one of several during that period. What date was it?

LaBerge: It was '75.

Belton: Right, at a time when we were really declaring and enforcing this doctrine that we spoke of earlier today. That was during the period of Chief Justice Donald Wright. The court, for several years in the early part of the 1970s, had occasion to consider rules of search and seizure law that were different in California from the rules declared under the United States Constitution by the United States Supreme Court, which at that time was more conservative than our court and had therefore adopted stricter rules on unwarranted searches and seizures.

1. People v. Brisendine (1975) 13 Cal. 3d 528.

So the California Supreme Court began drawing different lines under the California Constitution. And Brisendine was an example of where we made it very clear that the California Constitution is a document of independent significance.

Now I should say that since those cases, the people of California have amended the California Constitution in a way that overrules most of them. That was by what was called Proposition 8, the Victims' Bill of Rights Act,¹ some few years later in the early 1980s, which expressly subordinates the law of search and seizure in California to the federal constitutional law, by amending the California Constitution to so provide.

I thought it was very unwise--

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LaBerge: Okay, we're talking about the Proposition 8 being unwise.

Belton: Whether it's unwise or not, of course, is just my personal opinion. Nothing we can do about it, and in fact the California Supreme Court subsequently held Proposition 8 to be constitutional. It's not unconstitutional just because it's unwise. But the effect of Proposition 8 has been to cut out from the state constitutional doctrine, that we talked about earlier, this one area of search and seizure law.

Well, actually Proposition 8 is even broader than that. It speaks of admissibility of evidence, and it says that any evidence is admissible if it's admissible under the federal Constitution. So the people have spoken. I wish they would have spoken otherwise, but there it is. Those were difficult times.

Value of Initiative Process

LaBerge: On that issue of propositions, I know that Justice Mosk has a definite opinion on the initiative process.

Belton: What did he tell you?

LaBerge: That it has been overused.

Belton: Well, that's certainly correct. Yes, and it's not just because some of them are unwise, as Proposition 8 was. But that most of them are unnecessary, and most of them are poorly drafted.

LaBerge: That was the other thing--poorly drafted and not checked.

1. Proposition 8 (June 8, 1982).

Belton: Yes, because they're usually drafted by zealots--proponents of particular viewpoints--not by legislators. They don't go through the legislative process that a bill goes through, of running through committee after committee and being considered and reconsidered by staff attorneys and legislators in the many stages of the process that it takes to pass a statute. Instead, somebody gets an idea, a bee in his bonnet, and drafts something--perhaps with the assistance of some lawyer, perhaps not. But they're not trained legislative lawyers like the Office of Legislative Counsel, which reviews the Legislature's proposals before they're actually acted on; they're drafted by people who have an axe to grind. No one ever checks them to see whether they're intelligible, or whether they're consistent, or whether they're constitutional under the federal Constitution, or whether they're inconsistent with other provisions of the California Constitution.

The other problem that Justice Mosk must have spoken to you of is that when this system was invented, in 1911 under Hiram Johnson, it was considered to be a great populist reform. Hiram Johnson was of course one of the first great populist Governors, and the initiative was considered to be a shield against oppression by special interests that in those days--and perhaps today--had a strong influence on the Legislature. It was well known that in the first decade of the century the Southern Pacific Company and the Kern Land Company and various major powers of that sort--commercial powers--had very strong influence on the Legislature. The initiative was deemed to be a method of allowing the common man to have some input in drafting legislation, to have some say in what the laws of the state would provide.

If the common man could not get relief in the Legislature, he or she could go to the public with an initiative. That was the theory, and that was the way it worked for the first few years. It was not very often used. The figures are quite startling. I haven't looked at them recently, but in the first few decades, there was maybe one or two initiatives per year, if that.

But then after the Second World War, and more--particularly starting, in what--the 1960s, probably the procedure began to be used much more commonly, and increasingly by the very special interests that it was designed to combat. It became more and more expensive to mount an initiative. As the state grew, the population grew. It cost more and more money to put a proposition on the ballot. You had to eventually use paid circulators and signature gatherers; it was not enough to just set up a card table at the shopping center anymore. The proponents had to get out and collect millions of signatures. This took a lot of money. Eventually, and today, almost the only people who can afford this money are the big corporate interests, or other well-funded groups, such as, for example in a recent couple of elections, the Native American lobbies that have put on two major propositions permitting them to engage in vastly expanded forms of gambling on Native American tribal lands.

Vast amounts of money were spent by these groups. Of course, it wasn't all their own money. A number of--well, who knows? There have been propositions put on by the tobacco industry, and by the petroleum industry, and interests of that nature, so that in a sense the procedures have been turned upside down. Now it's the special interests who are using it increasingly to achieve their goals. In the process, they're able to amend the Constitution--as the Native Americans did, for example--and thereby insulate themselves from legislative control and reconsideration. They deprive the Legislature of the power to have any say in the matter, by making it a constitutional amendment.

Justice Mosk has long been very concerned about this problem, and I agree with him. There seems to be no solution to it other than a thorough reform of the process, which would be a very good idea.

Now you have to understand that half of the states in the Union have no such procedure. There's only twenty-some states, maybe 28 or so--I haven't seen the count recently--that even have it on the books, and in most of those it's rarely if ever used. California leads the way by far; Oregon has quite a few, too, but not as many as California. And there's no initiative in the federal system, so that the Congress can never be overruled by the people. In short, there's nothing inherent in this, nothing that says this is part of democracy. It's what's called direct democracy, instead of representative democracy; but direct democracy has many pitfalls, which is why it is not our general system of government. It might have worked in Athens in 500 B.C., but it doesn't work today in the complicated modern society that we have. So what would be needed now would be a thorough revision of this procedure.

I'd like to see it repealed, but that's asking too much. But it certainly should be controlled. Provisions should be made to submit proposed initiatives to something like preliminary legislative review, to determine at least that they make sense and that they're constitutional. A lot of the propositions that do get passed later come before our court and present difficult problems. In the first instance we have to figure out what the proposition means. That's the first step in the process: what on earth do they mean by this language? Some of it's very difficult to understand. And secondly, having figured out what they mean, we ask, is this constitutional? As a result, many propositions that pass are eventually struck down by the courts, which should suggest that there's something not working in this process.

Occasionally a proposition is so bad that the court orders it off the ballot before it is even voted on. That happened recently, and has happened several times. Usually, however, the court will say, "Go ahead and vote on it, and then we'll decide what it means and whether it's constitutional," because the people may spare the court the trouble by voting it down, which of course happens increasingly too. A large number of them get voted down.

LaBerge: How has all that affected the workload? How much time do you think the court has spent making those decisions?

Belton: Well, it certainly has had an effect--at least during the electoral years. And the year right after the election is when a proposition usually gets challenged. The really bad propositions get challenged on the morning after the election. I mean, the opponents are ready with their lawsuits! They've already drafted their complaints. The propositions take effect on the day after the election, according to the Constitution, and the opponents file their lawsuits that very day. But of course then the case has to go through the trial court, and through the Court of Appeal in most instances, so it eventually gets to our court sometime in the following year or two.

They do take a lot of time because by definition they're big, complicated issues, and the court does bear in mind that this is the will of the people that's been expressed: the issue doesn't get to us unless the proposition has passed by a majority of the voters of California. The court does not lightly overturn the expression of the will of the people in that fashion. But on the other hand the court has the obligation to do so when the case is clear. However, since the court

does defer, at least in the first instance, to the will of the people--as it should--it takes these matters very carefully and therefore spends a lot of time on these cases. They do take up quite a bit of the court's time in that way.

LaBerge: How about People v. Wheeler?¹

Belton: Ah. Well, that I could talk about for a long time. Other ones that I worked on I might have some thoughts on. People v. Shirley was fun. [looking at list]

LaBerge: You want to do that first?

Belton: No, you mentioned Wheeler. Shirley came later, anyway.

Racial Bias in Peremptory Challenges

LaBerge: Okay, People v. Wheeler was decided in 1978, and was about peremptory challenges.

Belton: Yes, that was a very interesting case and it turned out to be a very important one. A little background is in order.

There are two kinds of challenges that a party can make to prospective jurors. One is the challenge for cause, where the party challenging has to give some specific reason why the juror should not be seated. It usually has to do with some kind of bias, express or implied. The juror, let's say, has a strong view on the issues of the case or knows the defendant personally, or has a close relative who's been injured by a similar accident or by a similar crime. There are a variety of different grounds of challenge for cause.

Then the law has always recognized that there are times when a party isn't comfortable with a juror for reasons that he or she can't quite put their finger on--something about the juror's demeanor, attitude, body language, clothing style, hairstyle--a number of intangibles that may trouble the party. Recognizing that for centuries now--this goes back to the common law, which was well established in Blackstone's day, for centuries now--the law has allowed jurors to be challenged without reason, just on the basis of this feeling that the party may have about the juror. And these are called peremptory challenges. [spells]

I spell it out because it's often mistakenly written as "preemptory," which is a total different word, and I see it written that way in briefs far too often. Peremptory challenges are specified by the Legislature as to number, just as challenges for cause are specified. The Legislature, in other words, can regulate this process. It will provide, for example, that in a certain type of case each side will have maybe 12 challenges for cause and six peremptories--similar figures like that govern different types of cases.

1. People v. Wheeler (1978) 22 Cal. 3d 258.

The question came up in earlier cases--in particular in a case that went to the United States Supreme Court from a different state--whether a defendant in a criminal prosecution could complain if he believed that the prosecutor was challenging, by peremptory challenge, jurors on the basis of their race. You see, a challenge on the basis of race would not be allowed as a challenge for cause.

The typical case would be where a black defendant was on trial for committing a crime against a white victim, and the prosecutor wanted to keep fellow blacks off the jury and have an all-white jury. This of course was more common in the South, where racial concerns were much stronger, than in the North, but the issue came up a number of times. Eventually the United States Supreme Court upheld this practice, saying that a peremptory challenge was a *peremptory* challenge, and that the defendant could not complain even if there were grounds to believe that the prosecutor was using peremptory challenges on racial grounds to achieve an all-white jury, for example.

LaBerge: Do you know the name of that case?

Belton: Yes, the case was Swain v. Alabama, a case that arose out of Alabama, in probably the 1960s.¹ I don't have the date in front of me.

Swain v. Alabama was a famous case, but it was just one of many that had declared that the defendant cannot complain: a peremptory challenge is a peremptory challenge. You cannot go behind it.

Well, Wheeler was a murder case, where two blacks were charged with killing a white victim, and in the course of the process of choosing the jurors--the process is called the *voir dire*, which is old French for "to tell the truth" or "to speak truth"--the prosecutor challenged on peremptory grounds several black jurors.

The defendants objected on the ground that it was just a subterfuge for striking jurors because of race. But the trial court rejected the claim, reasonably citing Swain and the general rule: you can't go behind peremptory challenges, even in racial cases. The defendants were convicted and the case came to us--the Court of Appeal upheld it--and it was assigned to Justice Mosk, again in random rotation.

I took an interest in the case because both he and I thought there was something wrong with this process. We were suspicious that this was a subterfuge to evade the restrictions on what is equivalent of racial profiling in picking a jury. We talked about it at length, and he hoped that we could find a way to do something about it.

I specifically remember doing one more thing in the way of background. I realized that there was a resource on the court that could be helpful to me in understanding what was really happening here, and that was Justice Allen Broussard, who was a justice on our court at the time. He was an African American who had been a trial judge in Alameda for many years. Of course Alameda County has a pretty substantial black population and a fairly high crime rate,

1. Swain v. Alabama, 380 U.S. 202 (1965).

so it occurred to me that perhaps he had had experience in the trenches, so to speak, with this issue. I went down the hall and asked to speak with him, and I told him the issue.

Immediately he said to me, "Peter, this happens all the time in the trial courts--particularly to black judges. Black judges are particularly sensitive to what's going on in this area." He said, "I often saw peremptory challenges used for what I, in my heart of hearts, believed was a racial basis, but there was nothing I could do about it." He said, "You're right, though, to be very concerned about it, and if there's some way that we can do something about it, we should."

So I explored the subject with him for some time. This was a good example of why it's important to have a variety of viewpoints represented on the court; why it's important to have racial minorities on the court; why it's important to have women on the court; why it's even important, if I may say so, to have somebody who understands disability issues--either as a justice or as one of the staff attorneys--so that you can get a fuller understanding of what it is that's really at issue here, beyond just the printed page and the arguments presented by the parties. You bring a life of experience to the question as you do to the whole job.

After I spoke to Justice Broussard, I was encouraged to try and find a way to prevent this abuse. I did a lot of work on the case and eventually came up with a new process for dealing with the problem that I thought would work as a practical matter. I discussed the matter at great length with Justice Mosk, and there was some support in the law reviews for this view.

We developed this procedure: if a defendant in a criminal case--originally it was only in criminal cases--believed that the prosecutor was using peremptory challenges on a racial ground, the defendant should bring the matter up by objection. The trial court would then hold a hearing out of the presence of the jury, at which time the prosecutor would be asked to explain the particular reasons for each of the peremptory challenges that was questioned. The prosecutor would be given the opportunity to explain why he or she made that challenge as to that particular prospective juror. The trial judge would then consider in the first instance whether these explanations were plausible and, if plausible, were adequate to justify striking the juror. The trial judge would make the initial determination on each of these challenges.

If the trial judge found that any one of the peremptory challenges in question was invalid because based on racial grounds, that was enough. The trial judge would then order the entire jury to be dismissed, and the jury selection process would start over again.

If the trial judge found, on the other hand, that the explanations were both plausible and substantively adequate, the case would go on. The defendant could raise the issue on appeal, but there would have been a record by then: the proceedings out of the presence of the jury, where the prosecutor would give his reasons and where the defense attorney would be allowed to dispute those reasons. Those proceedings were, of course, taken down by the court reporter and transcribed and made part of the record, so that the appellate court would be able to put itself in the shoes of the trial judge and either agree or disagree with the trial judge. The appellate court would be able to conclude either that the explanation is implausible and was made up on the spur of the moment, or that it wasn't; or that it was substantively adequate, or that it wasn't.

If the appellate court found that there was any single juror who had been improperly stricken on that ground, the judgment would be reversed, because a defendant is entitled to a

totally unbiased jury, not just a partially unbiased jury. Even one juror is enough to infect a jury--one juror who's biased.

We based this opinion, again, on California law. This is another example of the doctrine of state constitutionalism that we've been talking about today. We recognized that Swain v. Alabama held otherwise as a matter of federal constitutional law, but we held that in California, defendants are entitled to a greater degree of protection under the California Due Process and Equal Protection Clauses than under the federal Constitution. It was a perfect example of the operation of the doctrine of state constitutionalism.

We construed the California Constitution to prohibit this process of striking--well, to be more exact, we construed the California Constitution to permit defendants to go behind peremptory challenges in cases of racial bias, even though the United States Supreme Court had declined to do so. The opinion was unanimous and was well received.

As I remember it, the prosecuting authorities of the state essentially admitted they could live with it, that this was not a proper use of peremptory challenges, and that it should be discontinued. Obviously not all prosecutors abused peremptories--I'm not saying that. But if any one did it, that's one too many. So the prosecuting authorities of the state, speaking through the Attorney General and other statewide organizations of prosecutors, made it pretty clear that they could live with our decision. So that put an end to the abuse in California.

But the good news is that the United States Supreme Court some years later agreed with us, and reconsidered Swain v. Alabama in a case called Batson v. Kentucky.¹ There the United States Supreme Court overruled Swain v. Alabama and held as a matter of federal constitutional law that this abuse should be similarly banned in all the states of the Union. They decreed a certain series of steps for prosecutors and defense lawyers and trial judges to go through which was similar to the procedure that we had created, and it's now of course applicable to all the states of the Union as a matter of federal constitutional law.

That was a case that we were quite proud of--both for the effect it had in California and for the effect it had in the nation as a whole. The United States Supreme Court gave us credit. Of course they had their own reasons, too; Wheeler was not sole ground of their decision. But it's clear that we had some persuasive effect upon them, and we're proud of that case.

Pretrial Hypnosis of Witnesses

[Interview 11: November 11, 2000] ##

LaBerge: Peter, last time we started talking about some of Justice Mosk's significant cases that you worked on, and today we were going to start with People v. Shirley, about hypnosis.

1. Batson v. Kentucky (1986) 476 U.S. 79.

Belton: Well, People v. Shirley--that's spelled as in the name of the girl's first name: S-H-I-R-L-E-Y--was decided in 1982.¹ It was an interesting case that dealt with an issue that was becoming important at that time. Issues have a way of coming into prominence, and it's unpredictable when that will happen.

In this case, various police departments in the State of California started using pretrial hypnosis of witnesses as a way to improve the presentation of the prosecution's case. Various hypnotists began to persuade police departments and district attorneys' offices that they could improve the recollection of prosecution witnesses by hypnotizing them before trial and working various hypnotic methods on them, so that when they came to testify they would be better witnesses, they would remember more. This doesn't mean that they were under hypnosis during the trial; it was a way of preparing the witness before trial.

Witnesses are always prepared by the party who wishes to put them on. It's a standard technique, and it's perfectly proper for an attorney or prosecutor to go over the case with the witnesses before trial and review their testimony in advance, and explore with them the aspects of their testimony that are important. Point out to them areas where they need to be more specific, point out to them areas where they can be less specific, that are not as important, and generally prepare them for the process of testifying.

Most witnesses are intimidated by the thought of getting up in front of a jury or a judge and testifying under oath. Therefore lawyers find it very helpful to go over the testimony with them in advance so that they will be better prepared and less worried about how the experience is going to unroll. That's fine. That was the way it was always done and should always be done.

But in the late seventies and early eighties, prosecutors began using this new technique--not all counties, but a few counties, including Los Angeles County, which of course is the most populous and therefore one of the most important. Prospective witnesses would be brought into the prosecutor's office and a hypnotist would be present. This was a hypnotist that was hired by the prosecution as an expert or as an assistant to their case. The hypnotist would then put the witness under hypnosis, which is easier or more difficult depending on the witness, and then purport to "re-live" with them the events of the crime. They would purport to take them back to the time and place where the crime occurred, and they would let them--or rather invite them and induce them and assist them--to recount their memory of the events. This would all be recorded and reviewed afterwards by the prosecutor to determine what aspects of the testimony would be particularly useful and which should not be played out.

The theory was that by this process, memories could be recovered that were not immediately available to the witnesses, and therefore they would remember more and in greater detail the events of the crime. Then once they remembered them, they would be able to testify to them at the trial itself. This was just in its early stages, this process. And as I say, only a few counties--but some important ones--were undertaking it, and not in every case; but there were a number of cases that appeared to lend themselves to this process.

1. People v. Shirley (1982) 31 Cal. 3d 18.

Shirley was a case of sexual assault and rape. A young man--I think he was an ex-marine--was charged with these crimes on a single victim. His name was Shirley.

The victim was brought into the prosecutor's office and underwent this process of being hypnotized and reviewing her memories of the event before the trial. Then came the trial, and she testified at length and in considerable detail about the alleged assault and who did what and when and how, and the various aspects that were necessary to support the prosecution's case. Shirley was convicted and appealed to the Court of Appeal. The Court of Appeal affirmed the judgment, and the case came to our court.

We granted review because we were concerned with this new technique, that it might present certain problems of reliability in the law of evidence, and therefore ultimately affect the fairness of the trial. The case was assigned to me, and I realized fairly quickly on reviewing the record that although the facts were there, there wasn't much in the way of expert explanations about the advantages and disadvantages of hypnosis for this purpose, so I undertook a fair amount of outside research into the medical literature on the question.

This is perfectly proper procedure. These are matters of which the court may take judicial notice. Essentially it's the responsibility of the counsel to present these kinds of information--the state of science on the subject. And as I remember, there were some references in the briefs that got me interested in the matter, but they seemed to me to be incomplete and were not sufficient to build our opinion on. But they did provide me with leads to the names of authors and journals that dealt with this subject, so I went across the street to the main library [San Francisco Public Library].

In the main library they have large collections of journals of various sorts, including scientific journals. By doing standard legal research on these journals, I came up with a substantial number of articles and books in the field, all very recent that bore on this question. It turned out that the issue was currently a pretty hot issue in the scientific world as well. There were a lot of articles on it, written by some distinguished psychiatrists who were experienced in hypnosis and research into hypnotic techniques.

I read these articles, and analyzed and abstracted them. They overwhelmingly reached the conclusion that the use of hypnosis under these circumstances was too unreliable to be a safe part of the judicial process. There were a number of problems with the use of hypnosis for this purpose. The main problem was the risk of suggesting, intentionally or unintentionally, facts or supposed facts or even hypotheses that would become part of the testimony of the witness--in the sense that the witness would tend to believe these so-called facts, the witness would believe that he or she actually did hear or see such and such, even though it was really--intentionally or unintentionally--a suggestion from the examiner. This is one of the natures of hypnosis, and one of the aspects of the way the human mind operates.

It turns out that people under hypnosis are extraordinarily suggestible, and in certain circumstances that's not harmful. Hypnosis is used as a parlor game and as a stage amusement. We've all seen that in one place or another, where the hypnotist will call people from the audience and plant in them what are called post-hypnotic suggestions once they're under hypnosis, and then bring them out of the hypnosis and send them back to their seats, and then trigger the response of the post-hypnotic suggestion. The individual will do something foolish, and everybody will laugh and it's harmless fun. But it does show the power of hypnosis over a

large portion of the population. In the case of a trial, most of the authors concluded that it was far too dangerous to the reliability of the testimony to allow this kind of pretrial preparation of the witness because of this risk of planting suggestions and false memories in the minds of the witness.

LaBerge: Is there any law in other states?

Belton: No, this was not an issue that had been addressed in other states, as I remember. But it was coming up in other states, and other states were beginning to worry about it. It wasn't used in a lot of states, but once things start in California or New York or some other big and important states, they have a way of spreading to the other states, and the idea becomes passed around the national community of prosecutors and police chiefs. Then everybody starts doing it, so it was important to get it right.

After doing this research, I came back and studied the record, and realized that this was a case in which this may well have occurred. This phenomenon may well have occurred. So I drafted an opinion for the judge that proposed to hold that the use of hypnosis under these circumstances was too great a risk to the reliability of the testimony to allow it to be used in criminal cases. The case was orally argued, and the court agreed with us and it was so held. That of course put an end to the use of hypnosis in this circumstance in California.

It was nipped in the bud in this process: all of a sudden you couldn't do that any more. There were one or two cases still in the pipeline where this had happened, and they were dealt with in the appeals--both by us and by the Courts of Appeal--but basically the process had ended in California.

I'm glad to say that the Legislature agreed with us too. Let me reach a volume over here-- [getting a volume].

LaBerge: Is this the most recent--oh, yes, the 2000 Evidence Code?

Belton: Yes. [turns pages] In 1984--which was therefore just two years after our decision in Shirley--the Legislature added a new section to the Evidence Code, section 795, which basically codified the Shirley holding and provided--still provides--that "The testimony of a witness is not inadmissible in a criminal proceeding by reason of the fact that the witness has previously undergone hypnosis for the purpose of recalling events which are the subject of the witness's testimony if all of following conditions are met," and then there follows a long list of conditions which are the Legislature's attempt to allow the use of hypnosis under very, very controlled circumstances--where these preconditions would, as far as possible, insure that there was some value to the testimony. But frankly, these conditions are so restrictive that I suspect that there have been very few cases, if any, that have complied with them and permitted the use of hypnosis under this section.

The result is that although the statute purports to allow the use of hypnosis under these circumstances, the conditions that the statute lays down--which are basically conditions that respond to our concerns in the Shirley case--are so strict that for all intents and purposes hypnosis is no longer used as far as I know in criminal cases in California. Since 1984 I have

not seen any cases that have come up where this has been a procedure that has been permitted under this statute, and so I think that the Shirley ruling solved the problem.

LaBerge: Was it a unanimous decision, do you remember?

Belton: [whispers]

LaBerge: I'm sorry to ask the question! [laughs] You're going to look it up? [laughs]

Belton: [gets the California Reports] It was not unanimous, but it was virtually unanimous. It was a six to one decision. Otto Kaus--Justice Kaus--for whom I have a very high regard, wrote a concurring and dissenting opinion in which he just expressed some lingering thoughts like, "Gee, it would be nice to use this evidence if it were reliable, but unfortunately it is not reliable. It never will be reliable any more than polygraph evidence--the so-called lie detector test--is reliable, which is also prohibited in California." Those are the kinds of evidence that just will never be reliable. The nature of the human mind is such that you can never rely on them for the truth, the whole truth, and nothing but the truth.

LaBerge: Well, we are going to refer researchers to two speeches in the appendix for a list of some of Justice Mosk's most significant decisions. Some you didn't want to comment on because you didn't work on them; but tell me, did you work on Friends of Mammoth?

Belton: No, I didn't.

Anecdotes about the *Bakke* Decision¹

LaBerge: Did you want to comment on Bakke, just because it's such a cited opinion? I'm wondering, even though you didn't work on it, did you have discussions about this before?

Belton: Well, I can tell you a couple of anecdotes.

LaBerge: Good.

Belton: We all lived through the Bakke experience. It was quite an upheaval. The opinion was worked on at length by Olga Murray, the judge's other long-time researcher, now retired. But the judge took a strong hand in the case because he has deep feelings and opinions and thoughts about the issue. He had long believed that any quota system was of doubtful constitutionality. And this issue was presented to the court in Bakke in such a way that he thought he should express that view in forceful terms, so a lot of work was done on it. The opinion was well presented, well researched, and well written, because everybody knew that it was going to be a landmark case,

1. Bakke v. Regents of the University of California (1976) 18 Cal. 3d 34

and indeed it went on to the United States Supreme Court. They granted certiorari and came out with an opinion which I thought was a little unclear because it was so deeply divided.¹

But our opinion at least was clear, and in it we held unconstitutional a program of a public university that based its admissions partly on racial quotas. That was the University of California. In that case it happened to be the medical school of the University of California at Davis campus. I mention that because of the following anecdote that might be of interest. I won't talk any more about the reasoning and holding of the case--this has been much reviewed and discussed. It was 1976; that's a long time ago, and there's been a lot of thought put into it.

Of course the issue is still alive in various ways. It's certainly far from a dead issue, and I suspect it will be a live issue for a long time to come. But that was the first salvo in the battle.

The decision was quite unpopular with minority groups, of course, and also with liberal whites who felt that it was an extremely conservative view. Many of them were surprised that the opinion was authored by Justice Mosk. They thought, "Well, here's a liberal justice with a long history of liberal decisions on the court--the most liberal that we've had on the court after Justice Tobriner." And they were genuinely surprised by the fact that he was the author.

They really shouldn't have been surprised, because the position he took--in which he deeply believed--was, as I say, a position he had long held that sprang from--I don't want to speak for him--but my understanding is that it sprang from his view of equal protection and his personal experience of being Jewish. Jewish people in America and other countries had long suffered from quotas. It was an article of faith of Jewish social philosophy that these kinds of quotas were unfair and unwise, so it wasn't a big stretch for him to bring this position--this predilection, if you will--to the table in this case. It should have been, therefore, not as great a surprise as it was.

Nevertheless it was seen as a surprise by many people, and shortly after the Bakke decision was filed--well, some months later, I would have to look up the dates--it came time for graduation ceremonies at the University of California. Judge Mosk had previously been asked to be the keynote speaker at the University of California graduation at, of all places, Davis.

LaBerge: General graduation or law school?

Belton: I think they had one large graduation for everybody.

There was some question as to whether he would either be disinvited by the students or the faculty, or whether he would recuse himself under the circumstances. But he said no, in an act that I think--thought then, and still think--showed considerable personal courage. He said, "No, I'm going to keep that date. I promised that I would be the commencement speaker, and I'm going to do it. I'm not ashamed of the Bakke decision. On the contrary--I'm proud of it, and I'm perfectly ready to go ahead and keep this appointment."

Davis is near Sacramento, so that's about an hour and a half drive from here. When the day came, I didn't go because I'm not sure I wanted to experience whatever he was going to

1. 438 U.S. 265 (1978)

experience; I'm not sure I had the courage. But he was ready to go, so he and our chief bailiff, Elliott Williams, drove up to Davis for this event. Elliott, like all bailiffs, was prepared to act as a law enforcement officer and protect the judge in case there was any scuffling or any other threat to his well-being. I might add that Elliot is a minority himself--an African-American.

Of course the university was prepared for any eventuality, too, and the university police were alerted to the possibility of trouble. Luckily there was no such trouble, but when the time came for the judge to speak--the room was full of the usual kind of audience you have at a graduation ceremony: students and faculty and family and friends--when the judge came out and was introduced, a significant portion of the audience stood and silently walked out in protest. That's all that they did.

The judge was ready for that and more, but fortunately that was all he had to face. He waited, I'm told, quietly while they all filed out, and then with only a brief and noncontroversial reference to the fact that some members of the audience chose not to participate, he proceeded to give his commencement address, which did not in fact talk about Bakke. That would have been adding fuel to the fire. It was, as I understand, a pretty standard commencement address.

The rest of the audience and the faculty that remained gave him a very warm reception and a standing ovation at the end to indicate their respect for him as a person. By then, in 1976, he had served many years as Attorney General and as a justice on the California Supreme Court, and they wanted to express their admiration and support for him.

When the time came to leave we were ready for some kind of problem in exiting, but again, that didn't happen and he was able to make a normal departure and return to San Francisco. It was all's well that ends well. But he could have faced a very difficult situation.

Chief Justice Rose Bird

Belton: I don't know that there's anything else to talk about concerning Bakke.

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LaBerge: Well, I have just another question on that. There were some reports that possibly Jerry Brown would have appointed Justice Mosk to be Chief Justice were it not for the Bakke decision. There was some comment that Jerry Brown said, "How could he have written that," or some such--

Belton: Yes, well, I thought I had heard all the comments, but I've never heard that one before. I know Jerry pretty well. I'm not surprised that he was among the white liberals that I mentioned a few minutes ago who may have been disappointed by this. I would be very surprised, though, if it had any weight at all in Jerry's decision about who was to be appointed Chief Justice. There was no vacancy at that time. Vacancy came a little later and things have a way of evolving. Jerry had other agendas.

The main agenda, of course, was to put the first woman in the court--Rose Bird. I can't believe that that rumor had any substance to it; I think that sounds like a law professor's speculation. That's their stock in trade.

LaBerge: What was the reaction among the staff when Rose Bird was appointed Chief Justice? You don't want to get into--I'm going to report for the tape I'm getting "a look." [laughs] You don't want to get into that?

Belton: Well, sure. That I have clear recollections about, because that was a major event in the history of the court. But in a way I'm reluctant to go into it very much. It was a long time ago, and the poor woman has recently died. I think I already expressed to you the view that one should say nothing but good of the dead: [quotes a Latin phrase] "*De mortuis nihil nisi bonis*," as the Romans said. But you've got that look on your face, too, that says you want me to.

LaBerge: Well, you know, as part of my job, I need to bring up issues that people will want to know about. That doesn't mean you have to comment.

Belton: [sighs] Well, I can comment in the sense of reporting what I think you already expect, confirming what you already expect to hear, and that is that there was of course considerable surprise at the appointment. Frankly, a lot of people expected Justice Mosk to be elevated to that position. He was the natural choice. He had been by then on the court for over a decade. Everyone knew that he had major experience in administering a large agency, because he was the Attorney General for six years and that is a big agency. And the job of Chief Justice does require administrative skills that not everyone in that office has had, or has had in different degrees. Each of the chiefs that we've had since I've been there, which is what, half a dozen all together, had those skills in varying degrees.

Just to go over them quickly, Chief Justice Gibson was highly skilled as an administrator. Why? Because he, too, had been in the state service as an administrator. He had been the Director of the Department of Finance, which is another big agency, and that's, among other places, where he honed his skills as an administrator. His successor, Chief Justice Traynor, was a gentle scholar who had not had the opportunity. Before he came on the court he was a professor at UC Berkeley School of Law, so he had not had the opportunity to develop these skills, and he wasn't particularly interested in that, anyway. He was more of a scholar, as I say. And so during his period--he was chief for what, seven years--the administration fell to other people in varying degrees. Then he was succeeded by Chief Justice Bird.

LaBerge: I think we missed somebody--Donald Wright.

Belton: You're right. Excuse me. Donald Wright was a very good administrator. He had been a court administrator when he was on the Court of Appeal. I think he was a presiding justice, and he had a natural skill for it as well.

Appointment

Belton: Justice Mosk seemed, therefore, to be a logical successor with his reputation--he was an outgoing, gregarious person, which is an important personal talent for a chief to have. The chief has to be, in a sense, the public spokesman for the court. He has to interact with other chiefs of other Supreme Courts around the land, with all levels of the California judiciary, with the Judicial Council, with the Administrative Office of the Courts. You need to be an outgoing, extroverted kind of personality if possible, and that was certainly true of Chief Justice Gibson and Chief Justice Wright; not true, of course, of Chief Justice Traynor.

But Judge Mosk seemed to have everything that would fit the bill, and so we were all expecting him to be named. When he was not, it was double surprise: first, that it wasn't Justice Mosk, and second, that it was someone that no one frankly had ever heard of.

Rose Bird had had a very brief but meteoric career. She started out as a public defender in Santa Clara County, and then went into Jerry Brown's government. She had never been a judge of any court. That in itself is not a disqualification, because neither Chief Justice Gibson nor Chief Justice Traynor had been judges before. One, as I say, was an administrator and the other was a professor.

That's true of the United States Supreme Court, too. Felix Frankfurter was a professor who also had never been a judge, and yet he was a pretty sensational justice. Of course that's also true of Earl Warren, who had been a district attorney and Attorney General and Governor, but never a judge. So that's not in itself a disqualification, but it was a consideration that made people begin wondering, "Well, what is her experience?"

Well, her experience was that she had served in Jerry Brown's cabinet in an administrative position. What was she? The head of the Department of--

LaBerge: Agriculture?

Belton: No, Human Services.

LaBerge: I guess I'm thinking of the Agricultural Labor Relations Board.

Belton: No, she was with Human Services. But in any event it was an administrative position, which was good in the sense that, as I said a minute ago, you need an administrator in this job.

The other consideration that was a surprise was that she was the first woman to be named to the court. The United States Supreme Court had already had a woman by then--Sandra Day O'Connor--and other courts had women. And there were women on the Court of Appeal: Mildred Lillie, for example, had been on the Court of Appeal for many years. So that in itself wasn't a problem. Many people said, "Well, this is long overdue and that's good." And I'm sure Justice Mosk and I--and Justice Tobriner and a lot of people here--thought that it was overdue. It wasn't the fact that she was a woman, but the fact that she was just not known--an unknown quantity--that caused the surprise and concern.

When she came on the court, which was some weeks later, it was the first time that we got to know her and her way of doing her job. Well, she was a very complex personality, and it was not easy to get to know what she was really thinking. I've been trying to understand her ever since, and I guess my longtime feeling is that she found herself in a pretty difficult position. She was a young woman, still in her forties, thrust into this position of great power and influence--in a sense, breaking into an old boys' club. She must have been pretty nervous, if not frightened. I don't envy her. As it turned out, of course, Jerry Brown really didn't do her a favor.

LaBerge: Right.

Belton: What he should have done is promoted Justice Mosk to Chief Justice and named her to fill his spot. Then she would have served as an associate justice for some years, for as long as he was chief, and in the normal course of events he would have retired after a few years and the Governor, whoever he was, could consider elevating her that final step. That's what happened with a number of Chief Justices who started out as associate justices: Justice Traynor and Chief Justice George are each an example.

But unfortunately Jerry Brown didn't do that. He put her right at the top of the system right away. It must have been pretty intimidating to her, and she responded by circling the wagons. She brought in her own staff, rather than inheriting the staff of the outgoing chief. And they seemed--all of them--to be more concerned with protecting her than with integrating into the existing court system. There was a good deal of secrecy and closed door discussions. It was difficult to get to know these people. She had her own chief of staff and her own staff of attorneys.

Management Style

LaBerge: Were you called upon to do any training?

Belton: No. None of us. No, they just learned on the job, And as a result, there were mistakes made, of course. They didn't consult with us on anything that I remember. Basically they said, "We're here, and this is the way we're going to run this office." It didn't start out on a good footing. There was a lot of misunderstanding between her staff and everybody else.

Eventually we got to know them, because she was here, what, nine years or so. We got to know them, and they were on the whole pretty good people. Eventually they loosened up and became colleagues rather than outsiders, but it took a while--several years in some cases.

But she never really did become a colleague in some ways; she just had a different style.

As I think I mentioned--if not, I'll mention it--when I wanted to talk to her predecessor, Chief Justice Wright, about a case, I would call his secretary and say, "Tell me when I can

come down the hall and talk to the chief for a few minutes. Tell me when he's free." And she would say, "Okay, I'll inquire." But then a few minutes later, instead of her calling me back, he would appear at my office door, come in, sit down, put his feet up, and say, "Peter, what can I do for you?" That was his way of doing business. It really made you feel good.

Not so with Chief Justice Bird. If you wanted to speak to her, you'd make the same phone call and eventually, sometimes it might take a day or two or three, you would be summoned down to her chambers and ushered in. And she would never be alone. She always had her chief of staff sitting there taking notes.

LaBerge: Who was her chief of staff?

Belton: Steve Buehl. Steve would be sitting there taking notes of the conversation. Sitting to the side, discretely, but he was taking notes. And when the conversation was over, and it was usually pretty short and sweet, or at least short--

LaBerge: [laughs]

Belton: --you were ushered out and you'd go back to your office wondering, what was all that about? Why was somebody taking notes?

It was just about the same time that the Nixon tapes were being exposed, and you thought to yourself, what's the difference between Nixon making a secret recording in a flower pot and Steve Buehl sitting there taking notes? In each case it serves to make a record of what was said. The only reason--the only purpose--we could think of was she wanted to make a record of everything that she said or was said to her so that she would be protected in the remote event that it ever became an issue as to what was said and what she promised to do or not do. I don't know; I've never known. I don't know that those notes were ever used, but they were certainly taken, and that didn't create a good feeling between the staffs and her office.

As far as the judges' interaction with her was concerned, you'd have to ask them, but I understand from anecdotes that she made a consistent effort to become a colleague. She would bake cookies and bring them to the Wednesday court conferences, where they would vote on the petitions. That's fine, but she was nevertheless, either by nature or because of her feeling again of being an outsider, she never was, I understand, a colleague in the sense that, for instance, Donald Wright was a colleague.

The justices had about as much difficulty getting to see her as we did. With her predecessors, Judge Mosk would just walk down the hall and bang on the door. But I don't think it happened that way with her.

LaBerge: And the difference in philosophies wasn't a factor in that?

Belton: Not at all. This is more, as I say, a combination of personality and circumstances. She was a shy person as a matter of personality, and the circumstances as I said earlier were intimidating; this was her way of protecting herself. No, philosophically she and Judge Mosk had a lot in common.

LaBerge: I was thinking that.

Belton: Yes, that was not a problem. They agreed on most issues that involved legal philosophy and their approach to legal questions. But there were these administrative difficulties. I guess over the years they did improve, but it was pretty slow and it was never the same feeling that we had with her predecessors or even her successors.

For example, her immediate successor was Malcolm Lucas, a totally different person in every way and very different from Justice Mosk in legal philosophy. He was very conservative, but he was a courteous gentleman of the old school and a pretty good administrator. Not as good as Donald Wright and Phil Gibson, but capable enough. He had a good staff and he was a colleague. Of course he had already been on the court for some years, so everybody knew him and he was not like an outsider. But the fact that you were an outsider is not dispositive, because Justice Wright was initially an outsider. He came on the court as chief, and he got along famously with everyone. So it has to do a lot with personality and circumstances.

You want to talk about the 1986 election?

The Tanner Hearings, 1979

LaBerge: Yes. But before that, do you want to briefly talk about the Tanner--or not the Tanner decision, the--

Belton: The hearings?

LaBerge: The Tanner hearings, investigation, because it comes out of this.

Belton: Yes, you're right. Chronologically that would be the next topic.

LaBerge: What I've read is that Rose Bird asked for the investigation without consulting with the other justices.

Belton: I think that's true. That was not a smart move.

LaBerge: And it came on election day. Or there was an election day article in the *Los Angeles Times* that sparked some of it.

Belton: Well, it was either on election day or just before. The history of the case is pretty well known. What's the name of the book that was written?

LaBerge: *Judging Judges*.

Belton: By?

LaBerge: Preble Stolz. [*Judging Judges: The Investigation of Rose Bird and the California Supreme Court*. New York: Free Press, 1981.]

Belton: Right. That says it all as far as the history goes. And there was a second book, right? Betty Medsger?

LaBerge: Betty Medsger. *Framed*. [*Framed: The New Right Attack on Chief Justice Rose Bird and the Courts*. Foreword by Richard Reeves. New York: Pilgrim Press, 1983.]

Belton: Right, which is a little less objective. So with those two books and numerous articles, there's nothing that I can contribute as far as the story goes, but I'll just briefly sketch in the recollections that I have.

This, again, was a long time ago. The newspaper published an article saying that the court had made some changes in an opinion in a case called People v. Tanner¹ which had to do with a statute declaring the consequences of a criminal possessing a gun--"Use a gun, go to jail," was the phrase. The court granted a rehearing, didn't they? And it came out differently after the rehearing was granted?

LaBerge: Yes.

Belton: Right, and unfortunately it was just before the election in, what was it, '78? Yes.

LaBerge: Yes.

Belton: As a result, it was fodder for the speculation of journalists who undertook the speculation that the court changed its opinion because of the impending election. Well, I know for a fact that isn't true. The court doesn't do that. The court grants rehearings every year. I mean, a few, not many--a few rehearings every year. And they're always for perfectly valid reasons. The court doesn't do it very often, because if you hear every case twice, you'll never get finished. But now and then it becomes important to reconsider a case in the light of changed circumstances or new authority, or new personnel on the court. For example, an opinion can be filed and then a judge can retire and a new judge be appointed with a different view. That happened just a couple of years ago in the Boy Scout case, wasn't it?

LaBerge: Boy Scout or abortion?

Belton: Right--the case about requiring parental consent for underage abortion.

1. People v. Tanner (1979) 24 C. 3d 514

If the new justice is confirmed during the period between the filing of the original opinion and the ruling on the petition for rehearing, the new justice (a) is entitled to vote on that petition and (b) is not bound by his predecessor, so he can vote to grant rehearing just because he disagrees with the first opinion. That happens both in our court and a lot of other courts, including the Supreme Court of the United States.

Anyway, we granted rehearing in Tanner for whatever reason. Again, I don't remember all these details, but the press speculated that it was because of the impending election, even though it wasn't.

LaBerge: Where some justices were up for confirmation--I just want to add.

Belton: That's quite possible, yes. There are some in almost every election.

Investigation by Commission on Judicial Performance

LaBerge: And Rose Bird was one of them.

Belton: Right. But the speculation wasn't true. Yet in order to clear the air, she, as you say, undertook to say, "Well, investigate us if you have this doubt." In retrospect, it wasn't a smart move, but I can understand why she said that. If someone impugns your integrity where integrity is an important part of your job, then you want to clear the air. This is a common reaction. If a denial alone doesn't seem persuasive, then investigate and we'll get to the bottom of all this. So the Commission on Judicial Qualifications--

LaBerge: Judicial Performance, I think.

Belton: That's right. Excuse me. There are two similar commissions in the Constitution. The Commission on Judicial Performance undertook this investigation.¹ It had never happened before in California, so they really had no idea how to do it. They made up the rules as they went along. And they hired an aggressive prosecutorial-type lawyer. He wasn't a prosecutor, he was a civil lawyer, but he was an aggressive type.

LaBerge: What was his name?

Belton: I don't remember the name. It's in the book *Judging Judges*, may even be in the opinion. To undertake this--he treated it like any other civil trial and started issuing subpoenas for depositions, well, not subpoenas, but requests for depositions. They started serving them right and left, up and down the halls.

1. In the Matter of Commission Proceedings Concerning the Seven Justices of the Supreme Court of California, C.J.P. No. 3012 (1979).

LaBerge: Were you served?

Belton: Yes. We were all astonished. The staffs were smaller in those days, and I don't know that they served everybody. They served certainly the major staff members: the chiefs of staff like myself and a few others--maybe most of the long-time staff members.

So I had to go off to a little room in the State Building, and there was not this fellow, but one of his assistants, and a reporter, a shorthand reporter, and I had to sit through a deposition. It was the first time I was ever deposed. I think it's probably true of most of us.

LaBerge: And did you hire somebody to--

Belton: No. I didn't know much about the case.

LaBerge: Right.

Belton: So I figured I'll tell them what little I knew. It lasted maybe half an hour. He asked me a lot of questions, and I just did the best I could. Most of them I didn't know the answers to, because it wasn't my case--I was on the outside. But I remember they provided us with a transcript of our deposition a little later; I looked at it, and it was the first time I'd ever seen myself in print, in the sense of spoken words in print.

LaBerge: Something like this oral history.

Belton: Very much like this oral history. [laughter] And it was terrifying, just like this is.

LaBerge: Do you still have a copy?

Belton: No. Well, if I do, I don't know where it is. But what I learned from it--and this is amusing, I think--is to have a greater patience with trial transcripts. You know, for years I'd been reading trial transcripts, and reading not so much the questions and answers, which are usually pretty succinct, but the rambling discourse of lawyers and judges in chambers when they're arguing points of law in the absence of the jury, or trial judges giving their statements of reasons. For years I had said to myself, "These people ramble on. Can't they speak in neat little sentences with beginnings and ends, subjects, verbs, objects?"

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LaBerge: We speak in a continuing stream of consciousness.

Belton: Right, and after seeing myself in print in that way, I was much more forgiving ever since of the rambling--apparent rambling--discourse of judges and lawyers in chambers. That was an unexpected benefit of that experience.

Hearings at Golden Gate School of Law

Belton: There weren't any other benefits. The whole thing was pretty depressing, because after that they went to the hearings, which were held at Golden Gate College School of Law, down south of Market in a law school auditorium with radio and television coverage--local radio and television. They were public--open, public hearings.

We were all invited to go, but none of us wanted to go. Yet we all brought radios to work and turned on the radios in our offices, and you could walk down the hall and never miss a word, because as you passed each room, everybody was listening to the same station, and you picked up the continuous questions and answers that were being given at the hearings.

The hearings went on for some weeks, and several of our judges were called to testify. The one I felt most sorry for was Justice Tobriner, who was then late in his long and distinguished career and deeply troubled by this whole process --first impugning the court's integrity, and then this public inquiry into the motives and practices of the court. He was very upset by these hearings.

It's particularly poignant because from the very beginning he was one of Rose Bird's strongest supporters, and yet she basically brought this onto the court. He must have had--I didn't talk to him about it, but he must have had great trouble reconciling that.

Hearings Ordered Closed

Belton: Finally they got to Justice Mosk, called him to testify, and he read his copy of the California Constitution and he concluded--he did all this on his own, didn't ask our opinions--he concluded that the Constitution doesn't permit open hearings under these circumstances, so he declined to appear and instituted a lawsuit against the Commission on Judicial Performance, represented by his son, Richard [Mosk], to compel them to close the hearings.

The case was called Mosk v. Superior Court (1979) 25 C. 3d 474. I won't give you the whole history of the case because it's in the published volumes of the Supreme Court. Because it went ultimately to the Supreme Court, although at that point the Supreme Court of California recused itself en masse and a pro-tem Supreme Court was chosen by lot from Court of Appeal justices. It was a reconstituted court with seven Court of Appeal justices--which we've done once or twice in our history, when needed.

LaBerge: Who appoints that? The commission?

Belton: No, probably the chief. I forget the exact technique. It's provided for.

LaBerge: I do, too, because I remember, I think that Justice [Frank] Newman¹ was involved in some way. I can't remember how.

Belton: Well, it was either that one or one of the other instances where he declined to get off the court and had to be pushed off.

LaBerge: Yes.

Belton: He didn't think he was disqualified, but ultimately he was ordered off. Anyway, in this case it was heard before that commission. The case was argued before that reconstituted Supreme Court in our courtroom. It was packed! I went there for that one. There was Richard Mosk standing up, arguing to this odd-looking bunch of justices. The counsel for the Commission on Judicial Performance argued on its side. The opinion was unanimously in favor of Justice Mosk.

So the hearings were ordered closed. Well, once the hearings were ordered closed, they basically fizzled because everybody lost interest at that point. The whole inquiry collapsed and it was all over, largely because of Judge Mosk's initiative in enforcing the Constitution as he read it.

LaBerge: And someone could have done that earlier and stopped the whole thing.

Belton: Yes.

LaBerge: Well, how did it affect your work here and the rest of the staff?

Belton: It was a distraction while it was going on. But mercifully it didn't last that long. It certainly was a distraction. It never happened before or since, thank goodness. I hope it never happens again.

LaBerge: Yes. Any repercussions among the justices, among you?

Belton: No, not that I can recall. We all sighed a deep sigh of relief and got back to work until the next crisis, which was the 1986 election.

LaBerge: Well, should we start with that the next time?

Belton: That's a good idea.

1. See Frank C. Newman, Oral History Interview, conducted 1989 and 1991 by Carole Hicke, Regional Oral History Office, University of California at Berkeley, for the California State Archives State Government Oral History Program.

Confirmation Elections, 1986

[Interview 12, December 13, 2000] ##

Background

LaBerge: Last time, Peter, we talked about the 1979 Tanner case and the Commission on Judicial Performance, and we said that today we'd talk about the 1986 confirmation election of the judges.

Belton: All right. These confirmation elections are provided for by the Constitution.¹ Each justice has to stand for reelection every 12 years. But if the justice is filling out someone else's term--let's say a justice dies or retires in midterm and the Governor appoints his successor--that successor will stand at the next election to fill out the term, and then stand for his own 12-year term when the time comes. Nineteen eighty-six was one of those years when there were a number of justices on the ballot. At most general elections there are one or more justices, because the terms are all staggered so that they don't all come on the ballot at the same time. In any given election, therefore, there may be one, two, three, or four justices of this court who are up for confirmation, and usually a number of justices of the Courts of Appeal. Those are of course geographic, so that the voters are only asked to vote for Court of Appeal justices in their geographical area; whereas for the Supreme Court, since it's a statewide office, all voters are asked to vote on one of the justices or whoever's on the ballot of the Supreme Court. In 1986 it happened that there were four justices of this court. Four?

LaBerge: Yes.

Belton: Four, yes, four of the seven, who were on the ballot for confirmation, and that was Chief Justice Rose Bird and Justices Joseph Grodin and Cruz Reynoso and Justice Mosk. Now in the years between the Tanner investigation and hearings and the 1986 election, the court had continued a process of reversing a substantial number of death penalty judgments that came before the court in automatic appeals. Chief Justice Bird took office in 1977, and it was in the years following that that this phenomenon appeared.

Death Penalty Statutes, 1977-1978

Belton: It should be said that in 1977, and again in 1978, the Legislature undertook to rewrite the death penalty statutes in California under compulsion of decisions by the California Supreme Court, and then by the United States Supreme Court, that held that the previous death penalty statutes were unconstitutional because unduly vague in the sense that they gave too much discretion to

1. California Constitution, Article VI, Section 16 (a).

the jurors in deciding who would live and who would die. In the years following those decisions in the late seventies, then, the legislatures across the country and particularly in California undertook to try to rewrite the death penalty statutes to make them more specific in the sense that the jurors would be given more guidance, and that their discretion--which was undoubted--would be channeled and guided by various standards.

This had never been done before in any state in the union, so all the states that undertook it were experimenting, including California. It was very difficult to do. No one knew exactly what was required to satisfy the decisions that had placed all these statutes in doubt. The Legislature did its best, but this was at the time a very controversial subject, and the Legislature inevitably brought to the debates partisanship and emotion. It wasn't an example of calm, quiet, rational legislating.

In 1978, then, a statute was enacted by the Legislature. Of course, it was immediately challenged in a number of death penalty appeals on various grounds relating to the constitutionality of the new statute in the light of the decisions, as I say, that had put it in doubt. The only way you can challenge a statute, of course, is in a case, an actual case. So by definition a death penalty statute would only be challenged in a case where the death penalty had been imposed, which is, as we know, an automatic appeal to the California Supreme Court.

Court Decisions in the 1980s

Belton: In the early eighties, therefore, a number of these appeals began reaching the court that presented difficult and wide-ranging constitutional challenges to the 1978 statute. It required the court to look at the statute very carefully in case after case and determine whether various provisions did or did not satisfy the constitutional requirements. Perhaps not surprisingly, a number of defects were found in the statute, and these defects, given the seriousness of the penalty, were so important that in each case the court was virtually compelled to reverse the judgment for a new trial under a statute that presumably would not have the defect in it. In other words, constitutional defects in the new statute were found in a series of decisions; each time they were found, they were inevitably held to be prejudicial, and required reversal.

There were a lot of death penalty cases in those days, and many of them presented exactly the same defects and contended that the same defects were presented in the trial. So if one was reversed on that ground, they all had to be--all the cases that were tried under the statute with that same constitutional defect in it. Then when the given defect was cleared up, another defect would surface in the statutes in later cases, and that defect would likewise require a number of reversals and new trials. This was probably inevitable, given the importance of the issue and the circumstances under which the statute was enacted, as I've mentioned earlier.

LaBerge: I can't remember--was it an initiative to start with and then became statute, or not?

Belton: In both cases it was a statute: there was a 1977 statute which was immediately struck down because it was so bad, and then a 1978 statute adopted by initiative, which is the one that the court began having to deal with in case after case after case.¹

The result was that in the early 1980s there were a series of reversals of death penalty judgments by the court, and they were all either unanimous or virtually unanimous, as the court was dealing with the statute on a section-by-section basis. This may seem to be a totally inefficient way of doing it, but it's the way our system operates.

There is no provision in our law for a situation, for example, where the Legislature would enact a complicated new statute and send it to the court for the court to decide whether or not certain parts of it were valid, and the court would send it back with an advisory opinion saying, "Part A is valid, Part B is not." That isn't the way it works. No court gives advisory opinions--no appellate court, or even trial court.

The only way that a new complicated and controversial statutory scheme like the 1978 death penalty statute can get reviewed is, unfortunately, on a case-by-case basis, as each case brings up different aspects of the statute. The problem is that in the case of the death penalty statute, almost any violation of the Constitution is going to be reversible error because the penalty is so grave. The prejudice is pretty well obvious. That was the problem that occurred in the early 1980s.

In each of these cases there were also other issues raised, as in any trial, having to do with the admission or exclusion of evidence, for example. But those were not the problem. Those issues were dealt with. Some were meritorious, others not--most of them were not prejudicial. That wasn't the problem. The problem was that the very terms of the new statute presented a lot of constitutional difficulties to the court. The result was that in the early 1980s there were a string of reversals of death penalty cases. This, of course, was reported in the newspapers.

"Legal Technicalities"

Belton: At the time, and I guess still today, it was a controversial subject, so it got prominent coverage. The newspapers--and here I'm going to bring up one of my little pet peeves--the newspapers tended to refer to these reversals as being on grounds of a "legal technicality." Legal technicality! This is a phrase that the uninformed members of the press use far too often. The result is that the public doesn't get educated on the real nature of what the court is doing.

There *are* such things as legal technicalities, but ordinarily if there is an error of that nature, it is declared to be an error but is held to be not prejudicial and does not result in reversal. That's a typical example of an affirmance despite errors, under the doctrine of harmless error. That happens all day long in this appellate court and in all appellate courts.

1. On November 7, 1978, Proposition 7 was passed by the voters of California, adopting a new death penalty statute. (Pen. Code, S 190 et seq.)

But a holding that a statute or part of it--a key part of the statute--violates the Constitution is *not* a legal technicality, it is a fundamental error; and under the United States Supreme Court doctrines on the question, a reversal is virtually compelled. In California it is true that our harmless error doctrine applies to constitutional errors. There can be constitutional errors in California that are not reversible because they are harmless under the circumstances, taking into account the entire trial of the case. But federal constitutional error, if it's sufficiently grave, is always reversible *per se*, and the court has no discretion to affirm under those circumstances, to find it harmless.

But the public doesn't know or understand this in large part, and in the 1980s the result was that the public became increasingly incensed at what they thought was the spectacle of the California Supreme Court reversing death penalty judgments right and left on "legal technicalities."

Four Justices Stand for Reelection

Belton: That was the backdrop of the 1986 general election, which of course was in November of 1986. The campaign began early in various ways. The first question to be determined was, was any one of these four justices going to stand for reelection? Each justice has the option to stand or not stand. If he or she does not wish to stand for reelection, he or she can simply let the time for filing a declaration of candidacy expire, and serve out their term; and depending on when they make that announcement, the Governor may nominate a candidate or make an appointment.

LaBerge: We don't need to go into that because people can look that up.

Belton: Yes, that provision is in the Constitution.¹ It depends when the justice makes that decision, but we don't need to go into that. The point is, though, that the decision has to be made by mid-August of the year of the election. By that time the justice who is up for confirmation, just like any other statewide candidate, has to file a declaration of candidacy with the Secretary of State and pay a small filing fee, and then they're on the ballot. So the first question is, were any of these justices going to not declare their candidacy? That was a decision each justice had to make.

Well, of course Chief Justice Bird had just joined the court, so it was obvious she intended to stay. And that was largely true of Justice Grodin and Justice Reynoso--they had only been on the court four or five years, whatever. Justice Mosk of course by then had been on the court for, let's see--'64, '74, '84--over 20 years, 22 years, and he was a man in his seventies. Therefore it was possible that he might just decide to hang it up at that point. So he had to make that decision.

He took his time making it. He didn't consult with his staff; I presume he consulted with his family. He didn't announce it. He wasn't required to announce it publicly until the

1. California Constitution, Article VI, Section 16 (d).

constitutional deadline, which was mid-August or so. So that was the first thing the press was speculating about, whether he would hang it up at this point or whether he would stand for election again.

LaBerge: Sort of like '98, where he didn't announce.

Belton: Yes, he did the same thing in 1998, right. He kept them waiting, which was his prerogative. Meanwhile, the drumbeats began in the public, and in the conservative press and among the conservative politicians, to put together an opposition to all four of these judges on the ground that they had all four voted over and over again to reverse death penalty judgments, as I have explained.

I don't remember all the political ins and outs during that period, but at first all four of them were in the crosshairs of the conservative politicians and press, and there were grumblings about mounting opposition to all four of them. But Judge Mosk was and is a very skillful political person as well as skillful justice, and he's always had a good political sense of how to deal with political questions and political problems. After all, before he joined the court he was the Attorney General for six years, which is a very political position, and you have to run for that against opposition. That's a real election, and he ran and was elected twice to that position against significant opposition. But he won by large margins and in the process he learned, if he didn't already know, a lot of political skills, which he put to use in those years and then again when the 1986 retention election rolled around.

Justice Mosk's "Campaign"

Belton: I think frankly that his declining to make an early public announcement was probably part of his way of dealing with this problem, which was pretty obvious to everybody. I think it's perfectly proper, of course; the justice has the right to do that. In any event, there came the statutory or constitutional deadline and he did file his declaration of candidacy, and then the campaign began in earnest.

Now I say "campaign" because ordinarily there was no campaign at all on judicial retention elections--certainly at the appellate level--but in this unusual year, it was necessary to consider campaigning for the office because there was a campaign in opposition that was being put together. Editorials began appearing in the conservative press, press releases were issued, ad hoc committees were formed, all in opposition to the four justices. This had never happened before in California history, and it was a very unusual circumstance.

Judge Mosk's entire campaign staff was his son Richard, and he used to boast that his entire campaign budget was the 22-cent stamp that he used--I think it was 22 cents in those days--to mail in his declaration of candidacy. Well, it also would have included the filing fee. But that was about it: he raised no money, he spent no money in this process. But what he did was very skillful and very successful, as I will describe in a moment.

The other three--it's a long time ago--I seem to remember they made various efforts at putting together a campaign organization and agenda. Now I may be understating what they did. I suspect that Rose Bird did more than the others. I'm sure that she consulted with political supporters, many of whom were from Jerry Brown's administration, he being the Governor who appointed her. They probably did various things in the way of press releases and speeches and so forth, but that I can't comment on because I didn't follow it.

But Justice Mosk pursued what he had developed as a successful election procedure, which was to deal with the problem on a personal level by personally getting involved with opinion-makers and people who could help him get his message out to the public. During the fall of 1986, when the court traveled--as it does--to Sacramento and Los Angeles, and as he as an individual occasionally would travel to the Central Valley where he had friends and other places in Southern California than Los Angeles, when he came to one of these cities, say Bakersfield or Fresno or Sacramento or Riverside, he often knew people in the local political organizations, the local Democratic county committees, for example, and/or people in the local newspapers--editors, publishers. He would often go personally, alone, to the newspaper, let's say the *Riverside Press* or the *Sacramento Bee* or the *Fresno Bee*, and say to them, "I'm going to be in town next week. I have a little time on my hands. Would you like me to drop by to chat with your editorial staff and answer any questions you may be interested in asking me, and give you a little interview that you could do with as you wish?" Well, virtually all the newspapers were delighted. Each thought it had a great scoop, although in fact he did this with a number of newspapers.

He would be ushered into the editorial room where the senior editors and/or publishers would be gathered, and they would take either a formal or an informal interview. They would ask him questions about how the court operated and why it did what it did and how--and they ask very pointed questions about, for instance, the death penalty reversals. And he would explain, as I have here, what some of the reasons for these reversals were and why he went along with them. But he would also point out that in a number of cases he voted to affirm the death penalty as part of a minority, usually with others in a minority, so that his record was more complex than had been made out. He tried to elucidate it for the benefit of the newspapers, who in turn would publish these interviews either verbatim or in summary form, and then often would accompany it with photographs and with editorials favorably commenting on him, and explaining to their readers how his case should perhaps be viewed differently from that of Rose Bird and the others.

So in the process of doing this over the fall, he had generated an immense well of goodwill in the press and, through the press, in the public. He also did radio interviews, I think. The result was that the newspapers and even some of the conservative political groups began backing off and separating him in their recommendations from the others, no longer grouping all four together. They began to recommend that he instead be confirmed, while continuing to recommend that the others not be. This went on for these several months, and when the election came it apparently did the trick because he was of course confirmed by a pretty standard margin, and unfortunately the other three were not. I think he should be proud of the way he was able to make his case to the public by this personal diplomacy and the personal contacts with the members of the press whom he respected and who respected him.

No Staff Input Requested

LaBerge: What about staff? How involved did you get in any of this? And other people?

Belton: That's easy to say: nothing. We did nothing. We were not asked to do anything.

LaBerge: But was it a great interest to you?

Belton: Well, we followed it in the newspapers. But as I say, he always kept this process as a personal matter between him and his son Richard. His son, who is his only child, is very devoted to his father, and is also a very political person with a deep interest in politics, as does the judge, so they were a natural pair to work together--and work in different ways. The son would work behind the scenes, making phone calls, making contacts, and then the judge would go and have these interviews and these chats. It worked beautifully.

But none of us were involved. He never asked us to do anything along these lines. We never offered, because it was clear to us that he wanted to do this his way, on his own. We didn't mind, because we're not hired to do that work anyway and we certainly don't feel we have the political instincts that he and Richard have. So we were just the spectators, and mostly all we knew was what we read in the newspapers. I'm not giving you any deep insights here. This is not inside stuff. This is a matter of public record. All these interviews are public.

LaBerge: What about the staffs of the other three justices? Do you think they--

Belton: That I really don't know. Whether the chief used her staff for this purpose, I could only guess. They were very close to her. They were not close to us, as I think I've told you before. So they may have done something along that line, but whatever she did, it didn't help her much.

On the other hand, she by then was in such bad public repute, I'm not sure anything could have saved her. I think she was probably beyond repair, which is sad. Let's remember this about Rose Bird: she was really thrust into a position that was something she was not prepared for, when she was named Chief Justice. She'd had no judicial experience. It was a tremendous obligation and responsibility, and unfortunately it just happened to be at the time that all this controversial death penalty litigation came along. She didn't go out of her way to look for these cases; they were all automatically appealed to our court. It just all landed on her, and she dealt with it as she thought she should do. She called it as she saw it. And for this she paid a very high price.

Justices Bird, Grodin, and Reynoso Not Confirmed

Belton: I think it was a great tragedy, because for all her faults--we all have faults and she certainly had her share--she certainly meant well and she wanted to do her job. She worked very hard at it. It

was just that the time was very difficult. She really never got a chance: she was only on the court from 1977 to 1986, which by historical standards was a pretty short service.

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I'll say a bit more about this. It was even, in a way, a greater tragedy for the other two justices who were not confirmed--Justice Grodin and Justice Reynoso. They were both gentle persons, scholarly, very warm, friendly human beings, very nice people to be with--very open, easy to talk to, easy to consult with, very personable, on a first name basis with everybody.

I won't say that they didn't realize what was happening to them, because I don't want to downplay their intelligence, which is extreme, but it was, I think, more than many people expected. I think many people expected Rose Bird would not be confirmed, but most objective observers did not think that the other two or three justices would likewise be rejected, because it is such a rare event. Ordinarily, justices are reconfirmed by 70 to 80 percent voting yes, and the reason that you get a 20 or 25 percent no vote in ordinary judicial retention elections is not because the people who vote no have any particular objection to the justice in question. They've never heard of him or her.

LaBerge: Right.

Belton: It's because there are 20 or 25 percent of the voting population who vote no on everything. I mean, that's the only explanation you can make. Certainly on propositions and questions, they tend to go straight across the board voting no for a variety of reasons. To some extent that's healthy, but that explains why that would be the typical vote, as it has been before and since. Because you ordinarily get a 70 to 80 percent yes vote, the prospect that three justices would in fact not even get a bare majority of yes votes was really more than anybody expected.

When Justice Grodin and Justice Reynoso also went down to defeat, clearly as part of a coattail effect--they would never have been rejected on their own--it's that they were all branded and lumped together in the public eye and in the newspapers as sort of "the gang of three." Again, it cut short promising careers of men who then were, what, in their late forties, early fifties, I guess, and therefore had many productive years ahead of them on the court.

LaBerge: How did it affect the morale here?

Belton: Oh, God. It was pretty bad: on the morning after the election there was a great cloud over the court staff. Nobody could believe it. As I say, people weren't too surprised by the Rose Bird outcome, but we were all astonished by the other two. It was as if a scythe had cut through the court. That's almost a majority of the court right there--just gone. It was staggering.

It was very quiet the next morning. People were walking around looking like they'd been hit by a ton of bricks, talking in hushed voices. And of course we didn't see the Chief and her staff. They simply drew in their horns and circled their wagons, to mix my metaphors.

LaBerge: [laughs]

Belton: They laid low. We had really no opportunity to see them. But Justices Reynoso and Grodin were at their usual available, outgoing selves. As it turned out, both of their offices were at our end of the hall, next to Justice Mosk's chambers--they were right next door. So we got to see a lot of them ordinarily, and it was no different after the election. They obviously were likewise astonished and disappointed, but they were grinning and bearing it. They were trying to be brave and gracious about the whole thing.

We somehow got through the remaining weeks of the term. Because their term continued until the first Monday in January, they were still in office between the election and the beginning of January, when the new terms began. I will describe one scene that will never leave my mind, and that was on the very last day of term. We're now January the second, Justice Grodin's door was open, and it was late afternoon. This was the last day that he was going to be a justice of our court. As I say, his office was just next door to Justice Mosk's, so I peeked in.

He was there in his office, in his shirtsleeves, the shirtsleeves rolled up, feet up on the desk, chair tilted back, and a smile of resignation on his face. Around the room were draped, in various poses of despair and regret, a lot of people from his staff, and a lot of other people--other staffs, too. There were refreshments spread around on tables, and he was chatting and having sort of a wake. Anybody was invited to drop in and say whatever was on their mind. You could stay as long as you wanted, and scarf up as much refreshments as you wanted. It was only soda pop and pretzels, but still he was trying to make people--it was all at his own expense--he was trying to make people feel better about it. In fact, it's as if *he* were trying to make *us* feel better--we who were going to survive him and continue on, he who was leaving. He was trying, in a way, to help *us* get over it.

And that's exactly what Joe Grodin would do. So I dropped in and I spent maybe half an hour talking about the old days, the days he had served on the court, and the cases that he'd worked on. He obviously had no regrets about anything, including all his votes on the death penalty cases or on anything else. He voted his conscience and he had no regrets. And when it came to asking what he was going to do next, well, it was a little unclear. But I'm glad to be able to say that he went on to find a new career as a professor of law at Hastings College, where he still is, and also getting involved in other public service operations.

Justice Reynoso was equally open and supportive in his final days there, and he went on to a career in various public positions. I think he practiced law for awhile, and then he was appointed to various commissions, and just the other day he was given a presidential award. Did you see that in the newspaper?

LaBerge: Yes, and now I can't remember--

Belton: What was it? It pleasantly surprised me at the time. It was some major award that the president gives every year to a couple of dozen people. He was one of the recipients. Could it be the Medal of Freedom? I think that's it.¹ So he, too, therefore has had useful years since. I've run

1. In August 2000, Cruz Reynoso was awarded the Presidential Medal of Freedom, the nation's highest civilian honor, by President William Clinton.

across Justice Grodin on a number of occasions, usually at concerts. We seem to have the same taste in music and restaurants. And he's always the same outgoing, friendly fellow that he was.

Rose Bird of course disappeared from sight, and I mean disappeared from sight. No one had any idea where she was. When she left the court, she left the public eye completely and there was no way of knowing whatever became of her for a number of years. At one point it was reported that she had surfaced, of all places, in Australia to teach a course or two at some law school there. And then she disappeared again. Occasionally she would publish a piece or an article, an op ed piece. Occasionally she would be quoted on some issue that she was consulted on, but she was very hard, apparently, to reach.

She was taking care at the time of an aged and ailing mother to whom she was very close. She never married, and I think she was the only child, or at least she was certainly in charge of this parent. And then of course to our astonishment she died from breast cancer, which I guess she had had for quite a while and maybe even had back at the time all this happened. I'm not sure of that, but when was that? It was last year, wasn't it?

LaBerge: Yes.

Belton: Yes, 1999. It came as a surprise to all of us because she was, what, in her early sixties, and somehow you just don't think things are going to happen that you don't expect.

LaBerge: Now have you read Justice Grodin's book *In Pursuit of Justice*?¹

Belton: I've only read reviews and passages, but he writes very well, and he's continued to be a very thoughtful spokesman for the viewpoint that he espouses.

Justice Frank Newman

LaBerge: Well, we were going to talk also about other--or not talk about, but to hear your reflections on other justices including Frank Newman.

Belton: [sigh] Frank Newman. Well, personally speaking, Frank Newman was the first justice I ever met, and when I met him he wasn't a justice, he was indeed a very important person in my life because he gave me my first job.

LaBerge: Oh, at Boalt!

Belton: Yes, when I graduated from law school, I applied, as I have mentioned earlier, for a teaching assistant position in half a dozen law schools. The one I heard from first was Boalt Hall, and

1. Joseph R. Grodin, *In Pursuit of Justice: Reflections of a State Supreme Court Justice* (Berkeley: University of California Press, 1989).

the professor in charge of that program at that time--I think it rotated around--was then Professor Frank Newman. So the telegram that I received offering me the job was signed, Frank Newman. I had no idea who he was, but I was most appreciative of the offer.

When I got to Boalt, of course I met him. I think I've already talked about how I took over one of his classes and things like that. He struck me then, as he is--as he was--as a very warm, friendly, outgoing person, and full of enthusiasm in life. But when I came on the court he stayed at Boalt because he had tenure there, and he just continued to be Professor Newman until--I will admit to my surprise--Jerry Brown appointed him to our court.

He was then, what, in his early sixties already--he certainly wasn't as young as some of the other justices. It seemed a surprising appointment--not because he came directly from the faculty at Boalt to the court, because Roger Traynor did the same, and he was of course a great success; but I had no idea that he had any interest in this kind of work. He was interested in two things mostly: one was teaching the courses that he was assigned to teach; and secondly, working in the public international law field, working with international organizations that advanced rules of international law on a very high, theoretical level, mostly headquartered in Geneva where he traveled a great deal.

He became a great supporter of public international law, which of course the Supreme Court of California never touches. We have nothing to do with public international law, or even private international law, so it was a surprise to us that he would have been appointed to the court, because nothing in his background indicated any particular preparation for it or interest in this field. But on the other hand he was a good solid liberal and was full of zeal, outgoing and friendly, so it was great to have him on the court. When he appeared, I went around and said, "Hi, remember me," and we got along well, as he did with everybody.

But he soon exhibited a style of judging that was unusual, to say the least. In oral arguments, for instance, he would sometimes ask questions which often surprised everybody in the room--not only the counsel, but all the spectators, the staff attorneys, and I daresay his fellow justices.

LaBerge: Can you give me an example?

Belton: Well, they would often be highly theoretical questions that seemed to come from somewhere in the larger legal sphere that wasn't obviously related to these precise issues before us. Not infrequently they would involve references to public international law.

LaBerge: [laughs]

Belton: I've heard him ask counsel, "What can we learn that bears on this case from the International Declaration of Human Rights?" Most counsel would look stunned, and their jaws would drop open, and they would not know what to answer. They would eventually hem and haw and produce something; you don't want to stand there with your mouth open.

There was one attorney, I think it was Quin Denvir, who became the State Public Defender after that and is now in private practice in the criminal field--I'm pretty sure it was Quin who, when he was making an argument, was asked a question like that. He immediately, instead of

standing open-mouthed, looked directly at Justice Newman and said, "Justice Newman"--he said something to the effect, "Justice Newman, I would be very interested to learn the exact relevance of that question to the issue being discussed this morning." [laughter]

In other words, he tossed the ball back to Frank Newman. And I must say Frank Newman was also taken aback, but he wasn't upset. Nothing would upset him. He's a very easy-going friendly fellow, and he smiled and said, "Well, I just thought there might be something there that we could look to for guidance, you see." There were general sniggers around the courtroom, titters and knowing smiles--nudge-nudge, wink-wink. It all passed over very nicely, as it would with Frank Newman. But it was often unpredictable, his questioning in oral arguments.

His written opinions were also unusual. They were all in the same style, and it's not a style that you will find any other justice using. They seem to begin in the middle of the case, rather than at the beginning. You're suddenly thrust into the middle of the case, then they tend to speculate about a few things, and then all of a sudden they're over. They're sometimes very difficult to read. They don't follow the traditional format of an appellate opinion. They're very personal to him--this may be the way he thought: he would go right to the heart of things. But they're not much use for the guidance of the bench and bar, because they don't take you through the analysis and explain all the reasoning and the whys and wherefores and the distinctions and the differences.

So although he was on the court for five years and it was a very pleasant experience, his contribution was, I think, less than it might have been because of his personal foibles--many of which endeared him to us, but didn't leave a lasting mark on the jurisprudence of this state. We're not talking about a Roger Traynor here.

Of course, there have been other judges who were equally succinct--Marshall McComb comes to mind--who were not at all as pleasant and as lovable, and therefore we don't look back on him with the same kind of fondness that we look back on Frank Newman's tenure here. At any event, he retired rather early and then went back to teaching--did his, what, five years, and I guess he thought he'd rather be teaching after all. And then he, too, died just recently, to our chagrin, because he was a very nice fellow, no doubt about it.

Recent Trend of Short Tenure

LaBerge: What has been the effect on the court of justices who only stayed four or five years? There was that time--

Belton: Yes.

LaBerge: When people were here a short time and left.

Belton: Well, that time may still be with us. I wouldn't say it's over. The trend, of course, which I think I discussed in the speech I made on the occasion of Justice Mosk's setting the world record, the California record--

LaBerge: Which is the world.

Belton: Yes.

LaBerge: For some people.

Belton: I did a little research at that time, because these are all matters of public record. In the first century of the court's existence, and indeed well into this century, the justices tended to serve 15, 20 years at a minimum. But starting--you'd have to look at the dates, but probably in the nineteen seventies and eighties--justices began serving only four or five years, sometimes even less. Then they would retire early or not stand for reelection, and they would go off the court.

Most of them went into private judging, which as you know is a process that is becoming more and more popular. The judge is retained on a private basis by the parties, who agree that the judge will decide their case and thereby avoid having to wait to go to a regular trial court, for which delays can be substantial. And these judges are very well paid--much better paid than they are on the court. I don't think they all did it for the money, but some of them did, and others did it because it's a more relaxed pace. You can set your own pace, free of the pressure that is on the court at all times. You can take a case or not, as you see fit.

The result on the court, I think, has not been good. We've had a series of turnovers. What you get is, you lose the institutional memory that you get from the long-serving judges. You have to keep reinventing the wheel. Each issue is suddenly a new issue. Well, it's not a new issue, but it's new to this particular judge, because he or she has just come on board. So it does unsettle things. It makes stability less obvious and it puts in question doctrines which other judges would consider settled.

And of course it's an upheaval to staff, too. We have to consider that, because the staffs serve at the pleasure of the justice, when a justice leaves, the incoming justice replacing him or her doesn't have to take on any of the outgoing justice's staff. Indeed, some people have been let go when they were planning on making a career of it. Luckily it hasn't happened to me yet, but it has happened to others. And if not let go, they wind up working for Judge A, then for Judge B, then for Judge C, and some of these changes are very substantial changes in political philosophy. That can be hard on a person's psyche, too, when you're trying to figure out who you're working for now and how they want to do things.

Judge Mosk's Contributions

LaBerge: Would you want to sum up Justice Mosk's contributions to this court, or maybe you want to write something at the end?

Belton: No. It's really not up to me.

LaBerge: Or, you've been saying it all along.

Belton: Yes, basically. Almost anything I say would err by omission, because he's served all these many years since 1964. He's been a great stabilizing factor on the court. He's always been here--been here long before any of these present incumbents joined us; so he does have this institutional memory, and he does represent a continuous presence. Not only that, he's been very consistent in his political and judicial philosophy, and he hasn't changed his views on many things, especially on the important things. On the issues that he cares deeply about, he has been consistent and predictable, and this has been very helpful to the court because he can give guidance to his fellow justices. He knows where we've been and how we got where we are, and this I think has been extremely valuable to the court as a whole. I think by now we know what his interests are--we don't need to go into those.

LaBerge: Yes, right.

Belton: He does represent this kind of continuing strength, which has been very valuable to the court.

Legislative Intent and Constitutionality

LaBerge: How about commenting on the role of the judiciary toward legislation?

Belton: Well, that is a different topic that much has been written about. I think our court tries to do what all appellate courts try to do in that regard; that is to say, we try to decide every case brought before us, but only the cases that are brought before us. In each case we have to determine what the law is, and then we have to apply that law to the facts.

How do we determine what the law is? Well, we look to two sources: we look first to the written law, in the sense of the statutes and the Constitution--our first reference is to the California Constitution and the California statutes. If there's a federal question, we would look to the federal statutes and the federal Constitution. And if the issue is one that has not been covered by statute, we turn to the common law. Every now and then we have cases that are purely common law cases, and that will always occur. That will always happen because, the Legislature doesn't address absolutely everything.

Now, since you ask about the Legislature: the duty of our court, which I think everybody tries to carry out as best they can, is, having found a statute that declares the law that governs the case, the duty of our court is to read the statute and apply it as written. Now, that is often easier to say than to do, because the statute may be unclear. It may be ambiguous. There may be gaps in it. It may be that the facts of the case before us don't quite fit the statute. So the court's duty is first to construe the statute--in other words to interpret it, to figure out what it means.

And the guiding light of the court in construing a statute is the legislative intent: the court construes a statute to give effect to legislative intent. Legislative intent is the guiding principle, and legislative intent is found by the court by looking in various places. On the face of the statute, this legislative intent may appear; it may be expressly stated. The Legislature, in some statutes, begins with a declaration of legislative intent. That's very convenient. Or, it may be, it has to be inferred from the words of the statute, and the history of the statute, and the evils that it sought to remedy, the methods by which it did this, and so forth. Bear in mind, there's a whole body of rules--unwritten or case law rules--on how to construe statutes and where to find legislative intent. We go through this process over and over again. I won't go into these rules because they're pretty well known by any practicing lawyer, but this is the process the court engages in.

Once it has construed the statute and determined legislative intent, determined what the statute means, then the court simply applies the statute--unless a party raises a question of validity of the statute, which of course the parties are entitled to do, by which I mean attacks the validity of the statute either on the ground that it conflicts with another statute or has other defects of a statutory nature, but more and more commonly on constitutional grounds, because every statute has to be constitutional as well as understandable.

So in cases when a constitutional issue is raised, the court must consider that: having determined what the statute means, it must then determine whether the statute is constitutionally valid. Again, a whole group of doctrines come into play, all of which are found in case law, about the deference to be given to the Legislature and all the similar doctrines applying in dealing with a constitutional challenge. That's what we do. We do it all day long. There's nothing unusual about it. Some cases it's easy. Other cases it's hard. That's what makes the job interesting. Justice Mosk does that just as much as any of the other justices. There's really no way to avoid that responsibility. It's in a sense the bread and butter of the appellate courts.

Strict Constructionism

LaBerge: Okay, you were going to talk about different attitudes of justices within the framework.

Belton: Yes, towards this process. We hear over and over again the phrase "strict constructionist."

LaBerge: Yes.

Belton: I want to say a couple of words about that. That phrase is usually used by people who don't know much about how the process works--often politicians or journalists. They seem to think that a strict constructionist is a judge who doesn't "make" law, but just simply "applies" the law. I wish it were that easy. I wish these people would understand that what you do depends on each individual case. If the law is clear, if it's as plainly written and understandable and plainly constitutional, then I guarantee you everybody just "applies" it. We are delighted when we find a statute of that kind.



Peter Belton & Justice Mosk at staff party celebrating Justice Mosk's 20th anniversary on the Court, 6/15/85.



Peter Belton receiving the Public Lawyer of the Year award from Justice Kathryn Mickle Werdegarr, State Bar Convention, Monterey, CA, 10/3/98.

The irony is that it's often legislators who use this language, not realizing that if they had done their job better and written the statute more clearly and plainly, the justices wouldn't have to do anything like "make law." They would simply be able to apply it as written. But--I've got to get this off my chest--the phrase is usually an empty phrase spouted by someone who doesn't know much about what they're saying. I guarantee you, just to take an example today--

LaBerge: Right, I thought it was pretty *apropos*.¹

Belton: For example, the United States Supreme Court--let's talk about them because people know them more than us. The theory behind a lot of these conservative politicians is that conservative judges are strict constructionists and that they only apply the law rather than "make" the law. Well, the fact is that all justices, whether liberal, conservative, or in between, do one or the other or both whenever they need to, according to the case.

One could make a very long list of decisions by conservative justices of the United States Supreme Court which, if you looked at them objectively, dispassionately, you would have to conclude that they were "making" law. They know it. They know perfectly well what they're doing. They never use these phrases among themselves. They know they do what they have to do to reach the result that they want to reach or that it's appropriate to reach. In some cases the most conservative judge will have to construe a statute, and sometimes in ways that seem to be very surprising and unpredictable. And you wouldn't have expected the conservative justice to do that.

As you say, with yesterday's decision on the 2000 presidential election, that reasoning could certainly be applied to some parts of that decision. There have been many in recent years, so it's really a complete red herring.

The only thing you can say, and I will end on this note, is that some judges are more reluctant than others to search deeply or far and wide for legislative intent. Some judges will stop more quickly in that search, and perhaps give greater weight to some wording of the statute, whereas another judge might think that the wording remains ambiguous. You need to delve more deeply to find what the legislative intent is. But I assure you that, conscientiously at least, all appellate justices are trying to give effect to legislative intent. They know that's their job. That doesn't prevent them from having personal inclinations, conscious or maybe unconscious, because they're all human beings, but to the extent that they're professionals, this is what they do.

LaBerge: Do you want to end on that for today?

Belton: You mean, I'm not at the end of your list? Oh, no, I'm not, am I?

LaBerge: We have the last section--the outside activities.

1. On December 12, 2000, the United States Supreme Court, in a 5-4 decision, overruled the Florida Supreme Court's decision to allow recounts of the vote for president in Florida. *Bush v. Gore*, No. 00-949 (Dec. 12, 2000)

Belton: Yes, but aside from that are we done?

LaBerge: I think so.

Belton: Okay. I'm running out of steam.

VIII THE JUDICIAL COUNCIL

[Interview 13: June 5, 2001] ##

Revising the California Rules of Court

LaBerge: Well, Peter, today we were going to talk about the Judicial Council. Both what it is, and what you have been involved in. Which committee and task force.

Belton: What the Judicial Council is, is prescribed by the Constitution¹ and I really can't add much to it. It's in the Constitution and in the statutes. It is basically a body that is the administrative arm of the courts, so to speak, that has a number of duties prescribed by the Constitution. It's a constitutional administrative body in that sense. It's chaired by the Chief Justice, and the members of the council are mostly judges, either appellate judges or trial judges that are appointed by various bodies, and some nonjudicial members. They meet several times a year and make major decisions on a number of topics.

What I should do is specify my involvement, and that's as follows. Back in February 1998, Justice Kennard asked me to participate in a task force to undertake a major project, which was to revise what's called the appellate rules of the California Rules of Court. The Rules of Court are a large body of rules that are adopted largely by the Judicial Council that regulate a lot of procedural aspects of the court system and therefore, to some extent, supplement the rules that the Legislature lays out in the Code of Civil Procedure. They're much more detailed than the Code of Civil Procedure; they're more flexible and easier to amend, and they serve the purpose of filling in a lot of gaps that the statutes leave.

Sometimes the Legislature will deliberately decline to enact rules and will call upon the Judicial Council to enact rules instead: the Legislature delegates this legislative power to the council. The council operates through a body called the Administrative Office of the Courts, the AOC as it's known. The Administrative Office of the Courts is the administrative arm of the council. And the Administrative Office of the Courts operates, itself, through a number of committees dealing with many aspects of the operation of the judicial system in California. And these committees, like the council itself, are composed of judges, practitioners, and clerks, and a variety of different people who have an interest in the different topics that the committees are addressing.

1. California Constitution, Article VI, Section 6.

One committee is called the Appellate Advisory Committee, which, as the name implies, is a committee that advises the council on appellate matters. Back in 1998 they decided that a project that needed doing was to revise the appellate rules of the California Rules of Court. The appellate rules, which make up, oh, about 180 or so rules, were first prepared and drafted by the famous Bernie Witkin in 1942. They were adopted at that time, but it was sort of a one-man job: Witkin, with his genius, got the thing going.

But over the years since 1942 there were many changes made to the Rules of Court, according to the needs of the courts as the time passed. And unfortunately, what happened was that most of these changes were apparently enacted without regard to the existing rules, so that new sentences and paragraphs would be put in to the rules almost anywhere. And sometimes they were put in the wrong rule, sometimes they forgot to take out the old rule, so contrary provisions remained. They were also written in very stilted, traditional legalese. Long paragraphs with no breaks. Sentence after sentence. Very difficult to read and understand and work with. We all lived with these for the first few decades I was on the court. It was not easy, but nobody thought about doing anything about it, because they were Bernie Witkin's rules.

Except they weren't, really, because they had been changed so much in the intervening years. Bernie wasn't very happy with them, either, but he didn't have much to say at that point. He had other projects of his own, of course, setting up and running his own publications.

So 1998 the Administrative Office of the Courts decided they would revisit these rules, and join what was the beginning, then, of a nationwide movement to write legal documents--statutes, rules, and contracts and private legal documents--in plain English.

LaBerge: Did you read the article in this month's *California Lawyer* [June 2001] about plain English?

Belton: Oh, sure. I didn't agree with everything in there. That's old news to us. Plain English is something of a trend, and of course I applaud it, that is hopefully going to spread across the land. We're not the first state. There have been several states that have recast their statutes, or usually their court rules, in plain English. But the time had come for California to join this movement and make a major statement, since many states looked to California for inspiration and guidance. The idea was that it would maybe continue this trend and push it along and give it some impetus.

So the decision was made to grapple with the California Rules of Court, the appellate rules only, because there are a large number of the California Rules of Court that are directed to the trial courts. They're called the Trial Court Rules, and those will be dealt with later. The rules begin with the appellate rules, and so did we.

So the Appellate Advisory Committee decided it wanted to undertake this project, both to reform the rules into plain English, and secondly, to develop a model of rule design and drafting that would be used for all future rules. In other words, both fixing up what's in there today and creating a model for future rule drafting. The Appellate Advisory Committee undertook to hire a fellow from Texas named Bryan Garner, who had made something of a business nationally of undertaking to teach people how to draft rules and contracts in plain English. He had been hired by the federal courts to redraft in this fashion the Federal Rules of

Appellate Procedure, which he had just recently completed. He's also written a major dictionary of modern legal usage. He has a business called Law Prose in Texas, which engages in this under contract. He also goes around the country lecturing to bar associations and lawyers on how to do the same thing on their private drafting, such as contracts and wills.

So he was retained as a consultant to redraft the California Rules on Appeal. But he was, as I say, a Texan, and he doesn't know, and admits he doesn't know, anything about California substantive law. The Appellate Advisory Committee was concerned that perhaps he would unwittingly make changes in substance that were not appropriate in the process of revising the style of the rules.

Appellate Rules Project Task Force

Belton: To ensure that that might not happen, Justice Kennard, who is the chair of the Appellate Advisory Committee, decided to set up a little task force of half a dozen members to watch over Mr. Garner's efforts. She asked me to join this group, knowing my interest in writing and drafting in English, and put together a small group composed of myself and two practitioners, that is to say, private lawyers, who practiced exclusively in the appellate field. Actually, both in the civil appellate field. Do you want me to name them?

LaBerge: Yes.

Belton: Okay. I think they're certainly worth naming. One is David Ettinger, who practices in Los Angeles. The other is Paul Vogel, who practices here in San Francisco. Both are members of well-known firms that specialize in civil appellate practice. Paul actually clerked for some years for Chief Justice Bird. And David had worked on the Court of Appeal. Both were very intimately acquainted with the Rules of Court, how they worked and how they didn't work.

Another member is Melinda Kavanagh, a longtime staff attorney on the Court of Appeal in the First District. She was therefore able to bring to this group the experience of practice in the Court of Appeal. Another member is Ed Jessen, who is the Reporter of Decisions. Another member is Terry Mead, who is the senior staff attorney for Justice Kennard.

LaBerge: So everyone has experience with the rules, on this task force.

Belton: That's right. We were chosen for that reason, plus our interest in language and clarity of thought and expression. Justice Kennard asked me to be the chair of this committee, which I agreed to do. But none of us at the time had any idea that the project was going to be as enormous as it turned out to be. We started meeting and reviewing Bryan Garner's proposed revisions of the first few rules, and it didn't take us long to realize that there was more to be done than Garner was actually doing. There were, as I mentioned a few minutes ago, inconsistencies in the rules that he was not aware of. There were provisions in the rules that were totally obsolete, that needed to be removed, that he also was not aware of. There were

gaps in the rules, where the rule would cover one aspect of the problem but not a corresponding aspect of the problem, leaving half of it unsolved. And that he was not aware of either.

One cannot fault him for this, because he's not experienced in California law. But it became clear to us that there was more to this job than we had first thought.

So the job slowly evolved in the first few months. In this period, we began more and more undertaking to revise the rules ourselves, using Garner's proposals as a first draft. It has evolved strongly in that direction ever since, to the point that now we're really responsible for all the revisions, from the very beginning to the very end.

We meet every three weeks, roughly. We have met over 50 times in the last three years. Each meeting runs for three hours nonstop. I'm a hard taskmaster, I don't allow breaks for anything! Bathroom, of course, you can go to, but we don't stop the meeting. And there's no coffee breaks. We have so much to do that we just need to keep moving. We began with rule one, and started our way through, one rule at a time.

LaBerge: Do you do work in between the meetings, too?

Belton: Oh, my God, do we do work in between the meetings! The total number of hours is just uncounted. I mean, during the meetings it's over 150 hours, but there have been hundreds and hundreds of hours between the meetings. For example, we quickly realized that we were going to have to make so many changes that we would be required to explain these changes in a drafters' note to each rule, explaining if we were making any substantive changes, what they were, and why we were making them. Or if we were not making such a change. Or how we were filling gaps. Or how we were resolving conflicts. Or how we were incorporating into the rules some rules of case law that had developed in the interim. Or why we were deleting things.

All this was put in the drafters' notes. The drafters' notes had to be written separately, between the meetings, and I confess that I wrote virtually all of them. Many of the drafters' notes are longer than the rule itself. Sometimes twice as long as the rule, because we had to do so much. Especially to the first dozen rules, which were the oldest ones and had been the most tinkered with over the decades.

So between the meetings I would draft the drafters' notes and I would send my proposed drafters' notes out to all the other members of the group, and also the proposed revisions. And they would send back their thoughts and their suggestions. Then at the meetings, we would actually decide the wording of the rules and the notes. It was very slow, hard work because it was so complicated. There were so many cross-references that had to be checked and changed, and so many provisions that were just unclear. First we had to figure out what they meant, then whether they should still be in the rule, and if so, how they should be written.

Basically we tried to simplify the language of each rule, to remove any ambiguities, and to rearrange the provisions within every rule so as to be in logical or chronological order. Sometimes we even arranged the rules themselves, the sequence of the rules, again to be in logical or chronological order. The idea was to make the rules more user-friendly, as they say today, make them easier for courts and law clerks and practitioners to use. Indeed, we kept in mind, and we always do, litigants who are not represented by lawyers--the pro. per. litigants.

They're entitled to have some guidance as to how to proceed in the courts. So we write things with them in mind quite often, to make it clear even to them how they should proceed.

Public Comment on the First Installment

LaBerge: So where are you now?

Belton: Well, after we did this for the first dozen or so rules, we realized that we were undertaking such a major project that we had to make an important decision: and that was, were we going to go through all the rules and make all the changes, and then adopt them all at once, or were we going to do it in installments? As we realized that it was going to take years to do this job, it was decided for a variety of reasons to proceed by installments.

We have completed the first installment, which is the first 18 rules. We're in the process of getting that adopted and into effect and into use by the public. But at the same time, we're proceeding with the next installment, which actually is almost finished. Which will be rules 19 through 29.9. In so doing, we've learned a lot about the bureaucratic processes of the Administrative Office of the Courts and the Judicial Council that we had no knowledge of because we weren't involved in that work. There are a number of procedures that have to be gone through before rules become law.

I should emphasize that the California Rules of Court have force of law. They are as legally binding as a statute enacted by the Legislature. So they're very important and they're very powerful, and we have to make sure they're just right.

One main procedural step that we didn't know about is: all rules, while still in their proposed form, have to be sent out to the public for public comment. So we undertook to do that, sending out the first 18 rules. They're mailed or e-mailed to 500 or 600 recipients in the public who have expressed an interest in this kind of work, such as all the major law firms in the field, law professors, all the clerks of the various Courts of Appeal and this court. Anybody who has an interest in the legal process gets a copy of these proposals. And they're on the court's website, so anybody can look at them. They're sent out, and we give about a two or three month time lag, during which people can read and study them and then send in comments in writing.

Hundreds and hundreds of comments came in. They were then arranged carefully by the staff of the Reporter of Decisions, which was a big help. Our group, the Appellate Rules Project Task Force, had then to review all the comments and respond to every comment in written form, and decide whether or not to adopt the suggestion made by each comment. That takes another many meetings, to go through all the comments. We did that: we adopted quite a few of the comments, we rejected others, we explained why in our notes, and we prepared what we hoped was the final version of this first installment.

Then a few weeks ago we presented that package to the Appellate Advisory Committee, of whom we are, basically, an arm, at a long meeting here in the State Building. With the

assistance of the staff attorney of the Appellate Advisory Committee, a very capable woman named Suzanne Murphy, I presented the first 18 rules. We had a long and lively discussion, and the committee required a number of changes, which, of course, we agreed to. With those changes, the committee approved this first installment.

After that meeting, we made the changes and put the whole thing in, again, what we hoped was final form. And the next stage of the process is coming up in a week. On the 13th of June, 2001, we present the same installment to the next higher committee in the Administrative Office of the Courts' structure, which is called the Rules and Projects Committee. We'll present these 18 rules, and if they agree with them and recommend that they be adopted, they will go finally, in July, before the Judicial Council, which, hopefully, will agree with the wording and adopt both the rules and the drafters' notes and order that they be put into effect. The effective date will be January 1, 2002, giving, therefore, time for people to get used to the new procedures.

Meanwhile, as I say, we're proceeding with the next installment. But we're going to go all the way to Rule 80. Rule 80 is our mandate. So we've probably got at least two more installments to go. No one knows how many years this will take. We're trying to finish this up by the end of the year 2002.

The difficulty is, first, that there are unexpected problems you get into when you start working with individual rules, and secondly, because they all have to go out for public comment--which, I think, is a good idea--that takes several months of delay right there. Then to fit it into the various meeting schedules of the committees that have to review and adopt it takes more months. So there's a lot of inevitable time spent just in bringing these things to the state of publication. But we press on. It's been very interesting, and I've enjoyed it, but I had no idea it would take as much time as it does.

LaBerge: Now before this, in all your years on the court, did you have anything to do with the Judicial Council or with running committees?

Belton: Not a thing. There wouldn't have been any occasion to. They're basically the court administrators; we deal with the substance. But this is like being a legislative drafter. It's like drafting statutes. It's an interesting experience. It's something that I'm good at and I enjoy doing, and I think we're producing a very good product. It's been much praised, our proposals. And I think it's going to serve as a model for future rule drafting in this state and elsewhere.

Plain English vs. Legalese

LaBerge: Can you sum up how it's going to change the practice?

Belton: Well, we're not trying to make substantive changes. We had to make a few. But basically it's going to make the appellate practice easier because it will make it so much easier for everybody to understand what the rules are. Now they're written in plain English. They're broken down



Peter Belton addressing the Supreme Court at the dedication of its newly restored courtroom, San Francisco, 1/8/99.



In the audience for the courtroom dedication: front row (l. to r.), former Chief Justice Malcolm Lucas, Alba (Mrs. Bernard) Witkin, Peter Belton; 2d row, former Justice Joseph and Mrs. Grodin, 1/8/99.



Peter Belton addressing the Supreme Court at the courtroom ceremony celebrating Justice Mosk's record-setting service on the Court, 1/7/00.



After the ceremony honoring Justice Mosk: l. to r., Seth Hufstedler, Kaygey Kash (Mrs. Stanley) Mosk, Peter Belton & (now Court of Appeal Justice) Richard Mosk, Justice Mosk's son, 1/7/00.



Peter Belton receiving plaque from Chief Justice Ronald M. George in the Chief Justice's chambers, commemorating Peter's 40th year of service on the Supreme Court Staff, 6/1/00.



Justice Mosk with members of his final staff: l. to r., Justice Mosk, Dennis Peter Maio, Judy Schelly, Rob Katz, Peter Belton, Ted Stroll, & Pat Sheehan, 6/1/00.

into many paragraphs and numbered subdivisions. We've let in light and air. We've opened them up. We've organized them into logical sequence. And they're just so much easier to use.

I defy anybody who's not an experienced appellate practitioner to open an existing rule, let's say rule four, on the reporter's transcript, or rule five, on the clerk's transcript, and make any sense of it. There are paragraphs in there that go on and on, and they're very difficult to understand. As we well know, because we had to understand them first before we put them into our style and format.

LaBerge: Bravo for you!

Belton: Thank you. It's one of these things that if we'd known at the outset how much work it was going to be, I'm not sure I would have had any volunteers. But we're all committed to it now, and we're desperately trying to finish this thing before we go to our reward. We had no idea it would take all this time. I feel it's been a major contribution to the law of California, and if it's the last project that I undertake in my career here, it's something that I think I can look back on with pride. Because we have made a difference, there's no doubt about it. All you have to do is look at one of the old rules, and look at one of our versions, side by side, and it's like one's in Latin and the other's in modern English.

IX MORE ON DISABILITY ISSUES

Handicapped Access Code, Title 24

LaBerge: Well, another topic is disability--in the committees you've been on, and how laws have changed and how conditions have changed in San Francisco.

Belton: We haven't talked about that?

LaBerge: The San Francisco Post-Polio Support Group.

Belton: That was an extracurricular activity of mine that took a lot of my time when I had time, back in the 1980s. I wouldn't have had the time now, but I did then. And that has to do with the whole topic of the post-polio syndrome. We didn't talk about that?

LaBerge: You only mentioned that. But certainly not the group and what you've done.

Belton: Well, I do have to give you a little background on this. There are two things to talk about. Let me think. There are two unrelated things. One is the post-polio support groups and the other is the access laws. One is personal, and the other is more public. Let me talk about access laws first.

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LaBerge: Okay, now we're going to talk about the Access Appeals, whatever it is called? Access Appeals Board? Or Access Appeals Commission?

Belton: Well, we've had several names. Beginning in the 1970s, the Legislature started to take an interest in either amending existing statutes or adding new statutes to facilitate the access of disabled persons to public accommodations in California. There were stirrings of this movement here and there in the nation, but California was one of the leaders in the matter. There were statutes enacted, rather general statutes.

But then in 1982, the Legislature delegated this legislative authority to an agency called the California Building Standards Commission, that undertook to draft a large body of regulations, which are like rules, spelling out in detail the requirements for public access for the disabled. This new body of law was worked on by a number of people who were disabled advocates themselves. Advocates for the disabled. And architects, and drafters, and contractors, and building people. They finally put together a body of rules which were enacted as Title 24 of what was then called the California Administrative Code and is now called the California Code of Regulations.

Like all regulations, they required administrative bodies to implement them and make them work. So a number of communities in the state set up local agencies to administer these state regulations. San Francisco was one of the first to do that, and they set up a committee of five under the city charter. Let's see, what was our original title--Handicapped Access--

Handicapped Access Appeals Board Member

LaBerge: Appeals Board?

Belton: Yes. The HAAB. The Handicapped Access Appeals Board. That was our name. I was one of the founding members of that committee. In fact, I was the chair of that committee, or the president, as we called it, for the first year or so.

LaBerge: And how were you appointed to it?

Belton: It's all provided by the city charter. There are five members. Two are required to be representatives of the construction industry. Two are required to be representatives of the disabled community. And one is the so-called public member. The theory was that the two representatives of the construction industry would always vote one way, and the two representatives of the disabled community would always vote the other way, and the public member would break the tie. But it didn't happen that way at all. We wound up being unanimous in practically all our decisions, and everybody worked well together.

I think we were appointed by the Board of Supervisors. The first four, yes, the two representatives of each of the two communities were appointed by the Board of Supervisors, and the mayor appointed the fifth, the so-called public member. We served four-year terms. Then we could be reappointed. We rotated around, the officers, the president and then the vice-president, throughout. Every year we changed. I was president two or three times over the ensuing years.

What our job was was as follows. The then-called Bureau of Building Inspection was the city agency that enforces all the code regulations on the building codes. Anytime you need a building permit, you go to the Bureau of Building Inspection and you apply for a permit. You

have to comply with all the building codes, both the state building codes and the city building codes. This was viewed as part of the building codes, these access laws, which really they were.

The Bureau of Building Inspection would be the first to enforce the access regulations. That meant, basically, saying to the proposed builder, what he must do to comply with all the codes, including the access regulations. But in San Francisco particularly, there was a problem. The problem was, first, that this city is an old city. A lot of the buildings are very old. And there's not much room for new buildings. Therefore, most of the jobs were remodels. Trying to deal with existing buildings and making them adapted to new uses, and in the process making them more accessible to the disabled. Secondly, this city, much of it is built on hills: there were real problems of steep slopes for access for the disabled.

To take into account these problems, the regulations permitted exemptions, under certain circumstances, from the access rules in cases of undue hardship. It usually had to do with the fact that either the site was too steep a slope to put in the kind of ramp necessary, or there was no room to put in such a ramp without destroying the project. Or if you put in the ramp or the elevator, the building would fall down because you'd have to move major support beams.

There were a lot of problems in San Francisco, and we realized that. The Bureau of Building Inspection would be the first line of application: they would either grant or deny these exemptions. If they denied them, the party who had been denied had the right to come to the board that I was a member of. That's why we were called the Handicapped Access Appeals Board.

We had, every week, half a dozen appeals, usually from contractors or architects or builders, who had been required by the Bureau of Building Inspection to apply some provision of the handicapped access regulations but who didn't want to do it. They would submit to us blueprints and elaborate explanations in advance, in writing, as to why they felt they should have an exemption from the Handicapped Access Code, which was the state code, as I say. Title 24 of the state regulations.

We would meet once a month to review these appeals and to decide them. At these meetings, which were held in various city buildings, the appellant would get up and explain orally what they had told us in writing as to why they wanted to do this this way or why they didn't want to do it, or why they claimed they couldn't do it. We then questioned them closely. We were a very good group, I think, in retrospect. The two--

LaBerge: Who else was on it?

Belton: Well, I don't remember all the names now. They did change from time to time because they were four-year terms. The two representatives, whoever they were, who represented the construction industry, were very good at identifying the construction problems and how they might be solved. And the two representatives of the handicapped community were good at

being, well, should I say sensitive to the needs of the disabled, and how important it was to do a certain thing a certain way, especially if you were in a wheelchair.

Now, we weren't limited to people in wheelchairs. We were also representing people who had other mobility problems, people who walked with canes or walkers, people who were blind, people who were deaf, any disability. All were protected here.

What would happen quite often is the contractor would say he can't do it because of some site problem. And the two members of our appeals board who were builders would say, "Now wait a minute. Look here. Why don't you move this door here? Bring the ramp around the side. Take out that wall, drop it in here, and you're done. You can do it." "Oh, I didn't think of that," would be the reply. Because these members were practical contractors, and they would often come up with a way of solving a physical problem.

Now it still might not completely comply with the regulations. But at that point, they would turn to us, the two representatives of the disabled community, and they would say, "Could you live with that? Would that be adequate access?"

A good example, which came up quite often, was the steepness of a ramp. The code requires a very gradual ramp, which is a ramp that rises one inch in every 12 horizontal inches. It's called a one-in-12. So for every inch that you go up, you should have 12 horizontal inches to get there. That's a very gentle ramp, and it's very nice. In new buildings, we always insisted on them.

If you look around you in the city, in any new building, you'll find those kinds of ramps. Including the one I'm sitting in right now, the State Building. Out front, they built such a ramp. Also, the regulations require that every certain number of feet there be a horizontal landing, so that somebody walking up it with effort could pause and rest. Further, it required that there be handrails on both sides of a certain height, and so forth.

But the slope was often a problem, because the lots in this town are often very small, very narrow, and very steep. Quite often, the only way to get a ramp in at all was to have a ramp that was somewhat steeper. Maybe one in ten, instead of one in 12. Or one in nine. Then it would be up to the members of the disabled community on this board to say, is that workable? Or is it too dangerous? And we would give our views, and that way we'd work out a compromise.

We tried to work out compromises in every case. Sometimes we turned them down flat because they were just not cooperating. Other times, it was impossible to find a solution, and we just had to allow the building to be non-accessible, which we regretted. But some of these buildings in San Francisco are very difficult. The older ones, especially.

California's Title 24: Better than the ADA

Belton: We started doing this in 1982. It went on for some years, and I served four years, and then I served another four years, and then I signed up for yet another four years. Along the way, the federal government, through the Congress, got around to doing something in the field. They enacted the now famous Americans with Disabilities Act in 1990.

But as you see, California--this is a point that a lot of people don't know--was way ahead of the Congress in this respect. And even today we are. Because although all the talk is about the ADA, believe me, what matters is the California Title 24 regulations. The reason is that the ADA did not supersede any California regulations. The Congress had no power to do that, and did not intend to do that.

For states that had no local regulations, and there were many of them, the ADA was a big change; in many of those states, that's all they have. But the ADA is much more vague and general than the California regulations: the California regulations run hundreds of pages. They specify things in fractions of degree and fractions of an inch. They're very specific. So in most cases in California, the ADA had no effect, and still has no effect. Because the California regulations already in place were much better and much more advanced and sophisticated. This is something a lot of people don't understand, but in California we got there first.

LaBerge: Did you have anything to do, or did you make any comments about that, when Title 24 was being written?

Belton: No. That was done in Sacramento by these groups, as I say. They were very good and very careful about it. From time to time it was amended. But they did a good job the first time. It's still a very good set of rules. There's always room for improvement, and I'm sure they're still working on it.

Anyway, I did this for two full terms of four years, and then I started my third term of four years. But after three of those years, making a total of 11, I got to the point where I just didn't have the strength and energy to spend all that time working on this project. I was beginning to feel other physical needs that needed to be attended to, so I very regretfully resigned from the board. They've since continued in business. They've now been renamed. They're now called the--

LaBerge: Access Appeals Commission?

Belton: Access Appeals Commission. Thank you. They're now a commission, not a board. Access Appeals Commission. And the word "handicapped" got dropped out because that has become politically incorrect, although it doesn't bother me at all. But they've continued, and as far as I know they're still doing a good job.

So I served 11 years on it, which I think was a pretty good public service. There was no pay for this. We had no budget. I seem to work largely for groups that have no budget and no pay, because all my work on the California Rules of Court is likewise. It's all pro bono work. There's no budget and no pay. Well, we had a very modest per diem for expenses, but it was very little. We were doing it all as a contribution to the community. That was my major public contribution as long as I had the strength and the energy to do it, I did that.

Post-polio Syndrome

Belton: That brings me to the final topic, which is the post-polio syndrome. The reason that I resigned from the Handicapped Access Appeals Board was, as I say, that I was beginning to feel physical problems that needed to be dealt with, and lack of energy. Let me say a little about that. I could talk a long time about it, but I won't. Sometime in the early 1980s--it's hard to put a date on it--doctors across the land began noticing that some of their patients who had had polio 30 or more years earlier were beginning to experience symptoms that were hard to explain. At first there were just anecdotes of symptoms that trickled in from here and there around the land. Mostly they were brushed off as being, "it's all in your mind," or, "well, it's the natural aging process. We're all getting older. No one's getting any younger. You've got to expect this sort of thing." And to some extent, it may be part of the natural aging process.

But there's a lot more to it than that. In the ensuing few years--the end of the 1970s, the beginning of the 1980s-- it began dawning on the medical profession that there was something more to it than that. It began realizing there were a group of symptoms that were commonly being experienced by many people who had had polio many years earlier.

I want to emphasize that with polio, the actual acute stage of the disease is only a couple of weeks: in the first ten days or two weeks, you either die or you survive. Then the infection's over and the temperature goes back down to normal and you go on with your life. At that point, you have to deal with whatever disability you're left with, but you're not sick anymore. You spend a whole lifetime thereafter in perfectly good health, except that you have a lot of muscles that don't work as a result of the original onset of the disease. But you're not sick.

So it was rather surprising when these post-polio people, like myself, began discovering that things were getting harder to do. Things took longer to do. Things were more difficult to do. You didn't feel as strong. You got tired more easily. You weren't able to climb those stairs, if you could do that before. One thing led to another, and people began wondering what's going on here. At first, the doctors had no idea; they didn't even have a name for this thing.

But eventually they began realizing that there is something to it. It was given the rather general name of "post-polio syndrome." Of course, a syndrome is just a collection of symptoms. What nobody knew, and, really, nobody still knows very much, is what is going on.

The only doctors that took an interest in it, or primarily took an interest in it, were the so-called physiatrists.

Physiatrists are doctors of physical medicine. It's a small specialty, but there are some in every major city. They specialize in dealing with medical problems that are intimately related to physical causes. Sometimes they're like neurologists, they work with people who have multiple sclerosis or muscular dystrophy or strokes; and they deal with physical therapists, trying to resolve these problems by physical therapy. They took an interest in this because they were about the only doctors who had any interest in polio, polio having been pretty well eradicated in the United States back in the 1950s.

These doctors began writing articles to each other and in their medical journals. Newspaper pieces began appearing in the popular press about the strange phenomenon. Various doctors began proposing explanations and methods of dealing with it. Conferences were held in San Francisco and in the Bay Area. There was one in 1982; there was another one in 1986. Some were in the East Bay, where doctors would get together and give papers. They were open to the public, sharing what they thought was happening and what they thought should be done about it.

Of course, we all took an interest. "We" being the post-polio community. We all took an interest in this, partly because it was happening to us, and partly because we just wanted to know what the future might hold. Now, it's pretty well established as a medical fact that there is this neurological process, that goes on in probably most, if not all, persons who had polio back in the 1940s and 1950s.

The general theory is now that polio damaged so many of the motor nerves that the remaining motor nerves that were not damaged had to work overtime throughout your whole life. Now, after 30 years, they are beginning to give out because they were asked to do more than they were designed to do. To move a muscle, for instance a bicep, if originally it had 100 nerve fibers and 50 of them were knocked out by the polio virus--and when they're knocked out, they're permanently knocked out--then the other 50 have been doing the work of a 100. Sooner or later they begin to give out.

There are a number of symptoms that are observed; not everybody has all the symptoms. But they generally include increased fatigue, increased muscle weakness, lack of balance, instability, pain, and breathing problems. If you had any breathing problems originally, they come back in different ways and can be quite serious. Increased sensitivity to cold temperatures because of lack of circulation. Sometimes swallowing problems. And a few others.

Post-polio Support Group

Belton: The way that the post-polio community responded to this was to band together and form support groups. Which is, of course, not an uncommon process in America today. As you know, there are cancer support groups, stroke support groups, and so forth. Alcoholics Anonymous, after all, is probably the original. A polio support group was formed in San Francisco and I became a member of it, and for a while I ran it. We met at St. Mary's Hospital. There were anywhere from eight to 20 people who would show up at the meetings.

LaBerge: How did you find each other? Was it through your doctor?

Belton: That's a good question. We found each other mostly through the doctors. I found this meeting because, at the St. Mary's Physical Therapy Department, somebody put a notice up on the notice board and my next door neighbor, who was going there for physical therapy unrelated to polio, happened to see a notice saying, "Attention: Any polio victim, if you're interested in joining a support group." She told me about it, and of course I went over and joined.

We would meet and talk about what the latest word was. We would share articles in medical journals, people would make reprints and pass them out. Articles in the newspapers. Each person would tell their own story. There would often be a facilitator or a doctor present to guide the meeting. It was comforting. At first I was going just as a matter of interest because I didn't experience any of these symptoms. For a long time, I didn't experience any of these symptoms. And for a long time, I thought I was going to be one of the lucky ones who got away with it.

But it turned out not to be the case. The difficult thing is identifying the symptoms, because they develop so slowly, so insidiously, so gradually, that it's hard to realize when. I can't tell you when did something begin. One day you just realize, I can't do that anymore. Or, didn't that used to be easier to do? Or, isn't that taking me longer to do than it used to take me? Just simple things like getting dressed in the morning, getting to bed, all the normal activities of daily living, as we call them, got to be harder and harder. The fatigue level was also increasing. Every afternoon, about mid-afternoon, you get to be pretty tired. It's hard to go on unless you can rest.

Of course, if you're working, you can't rest; if you're not working, a nap is in order at that point. I went to these meetings for quite a while. Then, ultimately, I was overwhelmed by the symptoms myself, and I concluded that I wasn't going to learn any more at these meetings. It became clear from going to the meetings, and also from the conferences, that whatever the cause--and they may have the right idea about the cause--there is no cure. All you can do is rest, cut back on your activities, conserve your energy, do less, strain less, and work less, so that you can preserve what little you have left. And that usually requires making major changes in your life.

That led to my semi-retirement two or three years ago, and going onto a half-time work basis, which I now do. I work only 20 hours a week now, because I just could not handle the full day. It would be too exhausting. And this led to a lot of other changes in my life. Cutting back on activities. Increasing use of assisted devices. I didn't happen to need one, but I know several people who used to walk with a slight limp, and then they had to start using a cane, and then they had to start using a walker, and then they had to start using a manual wheelchair, and now they use a power wheelchair: the same person, over a period of two or three years, because of loss of strength as part of this post-polio syndrome.

In my case it showed up in a wide variety of ways: increased fatigue, lack of strength, and increasing weakness. And increasing difficulty in breathing, especially at night. At night, everybody breathes more shallowly when they're asleep; and if your breathing is shallow to begin with, you wind up not getting enough air at night. So I've had to deal with that by various devices. I won't go into all that.

LaBerge: Was this something you invented yourself? A device for turning? Was that related to the breathing?

Belton: No. I invented a lot of devices over the years, and now I've had to improve them and invent different techniques. One way you respond to this increasing group of symptoms--well, one way I respond--is by changing my techniques of doing things so as to make the most of what muscles I have left. Also, you take more time to do things. You get additional equipment. More power units of various sorts. For example, I have overhead lifts on my bed, toilet, and shower to get in and out of the chair. I used to operate them manually, but that got to be too much effort so now I have electric ones. I just push a button and they raise me and lower me. There's an example of improving your equipment. As I said a few minutes ago, people would switch from a manual chair to an electric chair in order to save their arm strength. Then you get additional human help, which is the process I'm currently engaged in. Hiring people to help you do things that you need to do but can no longer do alone.

Disability Is a Second Job ##

LaBerge: You were saying that requires many changes in your life.

Belton: What I mean by that is, many changes that you're aware of. Unfortunately, what none of us know is how many more changes we're going to have to make, because this is apparently an ongoing process like a degenerative condition, like multiple sclerosis, for example. So what we don't know is how far it's going to go, how weak we're going to get, how much help we're going to need, and where we'll find it. There are many, many questions ahead, and the future is very unclear. All you can do is take it one day at a time and do the best you can.

LaBerge: Is there some kind of support group or clearinghouse here in San Francisco where you can call and say, "I need to find attendants. I need to find rides."

Belton: Well, yes and no. There is, in San Francisco, something called the Independent Living Center--Independent Living Resources Center, ILRC. In Berkeley it's called the Center for Independent Living. Most major cities will have something like this, but only in the major cities. They are nonprofit organizations that exist--with various sources of funding, which are usually pretty thin--exist to bring together resources to assist the disabled in various ways: by providing referrals for attendants, by providing instruction, by providing various kinds of information, mostly. And support.

But that's just the very beginning. You've got to go much further than that; you need much more than that. For instance, in the equipment field, you're pretty well at the mercy of the wheelchair providers. That is to say, the companies that sell and service and modify wheelchairs. And most of them have various problems of one sort or another. It's all very expensive. Sometimes you're covered by insurance, either public or private, sometimes you're not. The equipment is extraordinarily expensive: for example, for the average electric wheelchair nowadays the prices start at about \$8,000. Just for a wheelchair. And you can go up to \$10,000 or \$12,000 very easily. My chair cost \$15,000.

So all the equipment is expensive, and it's hard to get parts, it's hard to get service, there are not many people interested in doing this. Not many people are trained to do this. There are great delays, great frustrations. I think I may have said earlier in these chats, and I certainly want to repeat it now, because it's getting more and more true, that having a major disability is like having a second job. It takes that much of your time and energy just to do what needs to be done to survive with the disability. Which is why it's like having two jobs, if you have a job and in addition you've got to deal with all the problems relating to that.

It takes time, it takes money, it takes energy, it takes effort, it takes persistence. People never do what they say they're going to do. They never do it *when* they say they're going to do it. You have to make phone calls over and over again. You have to go to places to get service, or you have to wait at home for hours and they don't come. It's very complicated and frustrating. So you use both public and private resources. You use whatever resources you can get through your health insurance.

There are home health care agencies that you deal with to try and get assistance from those sources. We're lucky that in a city like this there are these resources. It would be very, very difficult to survive in a small town in California or anywhere else with these needs, because there are just simply no resources out there. There's no technical support, there's no medical support, there's no social support. If you have to live with one of these heavy and developing disabilities, you must do it in a major city. And you must have a lot of strength and a lot of patience and a lot of courage.

LaBerge: I was going to ask you, but maybe you've just answered it, how you have been persistent. From the beginning of this, how you kept on at school and went to law school, despite the fact that it took major effort.

Belton: Well, that was nothing compared to what I'm going through now.

LaBerge: Isn't that something? At that time, you probably would not have believed it.

Belton: No. I had no idea. Well, I suppose it arises out of basic survival instinct that everybody has. I mean, you're either going to fight or give up. You don't have much choice. It just takes enormous resources, patience, and courage. And determination. Or you give up. Some people do give up. And maybe I will one day. But at the moment, I'm fighting on. You just don't know how long you're going to have to fight. You don't know what you're going to have to fight against, or what tools you will have left to fight with. Unfortunately, the battle gets harder and your weapons become less effective. So it's probably a losing fight in the long run, but maybe life as a whole is. What did somebody say? Life is a fatal condition. It's just a matter of time before it wins. Life is a terminal disease.

Giving Up Driving, 2001

Belton: I suppose, since I talked earlier at great length about my driving, I should say one more thing. That is, that as a result of this post-polio syndrome, a couple of months ago I made a very difficult decision: to give up driving forever. I'd gotten to the point where I realized I was not in full command of that vehicle, even with all the sophisticated driving aids that I had: the supersensitive steering, the supersensitive brakes, the extra-large mirror, all those things. I was still driving a full-size van, which is a large, heavy vehicle. But I couldn't drive anything smaller, because you can't get in anything smaller if you're in a power wheelchair. This is the smallest vehicle you can get in and out of and stay behind the wheel to drive.

I had a few close calls, and I realized that because my arms were getting weaker from the post-polio syndrome, and my balance was getting weaker, and I wasn't able to turn my head as far to look to the side, that it was getting too dangerous, and that I owed it to myself and to the public at large to stop driving before I hurt somebody. I made that decision. It was very difficult to make, because it's difficult enough for anybody to give up driving, but it's particularly difficult for disabled persons because they give up, by the same token, a major part of their independence. I can't just hop on a bus.

But after careful thought I decided to do that, and my decision was warmly supported by my family and my coworkers and my friends, who realized how hard it was for me to make that decision but how correct I was to do it. There then arose, of course, a whole new set of problems, the first being, how do I get to work. I spoke with Justice Mosk, explained the problem to him. He spoke to the clerk of the court, a fine fellow named Fritz Ohlrich.

Frederick, known as Fritz. Fritz reasoned that I had contributed a great deal to the court in the past 40 years and the court could help me out now a little in my hour of need, so to speak.

So he directed one of his deputy clerks, another fine fellow named Joseph Cornetta, to be my driver on a regular basis, driving the same vehicle that I had driven myself for the previous 14 years. But I was now the passenger and he was the driver. We made the necessary changes in the vehicle. Took out the hand controls. Put in a permanent seat for the driver. Put in a lock-down mechanism for the wheelchair in the passenger position. The lift, of course, continues to be used as a lift. And I'm now driven back and forth to work by Joseph. He's an excellent driver; it's a great relief for me at the beginning of the day, and particularly at the end of the day, not to have to struggle with the steering wheel and the vagaries of traffic and the possibilities of emergencies. I can just relax knowing that I'm in good hands.

To get around the city at other times, for instance, to go to doctors' appointments, or dentists' appointments, I now participate in the paratransit system program. In particular I use the so-called ramp taxis, which are taxis, regular taxis, the Yellow Cab and Luxor and Town, all the big companies, that use mini-vans with ramps so that they can take a wheelchair on board. Then they tie you down and take you where you're going. That solves that problem. Of course it's not the same as jumping in your own vehicle, to go whenever you want to go and wherever you want to go. But it's just one of the adjustments I've had to make as a result of this post-polio syndrome. I imagine I'll make further adjustments as needed.

LaBerge: Have you about had it?

Belton: Well, I hope we're at the end. Let's wrap it up.

Overview of Career at the California Supreme Court

LaBerge: Okay, let's wrap this up. Do you want to make a comment on the rewards and advantages of your career? You certainly said something about it today just in talking about the rules. What you contributed by that.

Belton: Sure, I can make a comment. I mean, it's going to sound a little self-congratulatory.

LaBerge: That's fine. We should end on an up note anyway. Because we were going into a down note.

Belton: Yes, that's true. Let's be positive. I'm trying to be positive.

LaBerge: And that's the wonderful thing about you, I would like to say, Peter. You are positive, through all of this.

Belton: Well, I try to be. There's no point in moping.

LaBerge: But not everybody could do that. There's something in your spirit.

Belton: Oh, well. I think more people could do it than realize it. It's only when you're called upon to rise to occasions that you do rise. Many people think, oh my God, I wouldn't be able to do that. But you'd be surprised. I think most people who become suddenly disabled--like, for example, Christopher Reeve, it can strike from one moment to the next: you can be completely confined to a wheelchair as a result of an accident or a stroke. Most people, I think, will rise to the occasion. One way or the other, they will learn to do what has to be done. I think it's just a part of human nature. Maybe some of us are better at it than others; but on the other hand, I've had a lot of practice.

Okay, to get back to your question about looking back on my career. To say "looking back," it's implying that it's over. Well, it's not quite over.

LaBerge: No, it's not over. We're just looking at what you've done up to this point.

Belton: Realistically, though, it's getting near the end. I don't know how long I'm going to be able to work even half time, and with Judge Mosk being the age he is, I'm not sure how long he'll be working, and when he is no longer here, what I would do. All these are questions that are among the many that I have to answer one day. But looking back, at least at this point, which is reasonable, because I just passed, last June, my 40-year mark on the court, I certainly feel that I have had a good career, that I have made a contribution to the court and to the work of the court. It's been a privilege for me to be able to work all these years in a job that I love, in a job that I think that I do pretty well, and for people whom I hold in very high regard. First, of course, my two employers, Justice Schauer, originally, and then for the last 37 years, Justice Mosk. Two of the finest people I've ever met. It's been a great privilege and an honor to be able to assist them in the work of the court, and through them, the people of California.

Equally important has been my staff, whom I've worked with. They, of course, have come and gone, changed somewhat over the years, although, for the last eight or nine years it's been pretty stable. They've all been very supportive of me and my needs, and it's been marvelous to interact with them on cases and on personal matters as needed. I should say, right now, that both Justice Mosk and my staff have been very supportive in my recent problems with the post-polio syndrome, and very understanding of my new difficulties and my needs. I'm sure I couldn't have done it without them. And by my staff I include my secretary Pat Sheehan, who keeps us all going; she's the world's greatest secretary, without doubt.

So I feel that through the work of the court I've made a pretty significant contribution to the development of the law in California, and through that, to the well-being of the people of the state, for whom the law is an important component of society.

Then more recently, my contribution first to the Handicapped Access Appeals Board that we talked about, and secondly to the Appellate Rules Project, which has taken so much of my time in the last couple of years. All these are things that I can look back on with satisfaction,

that I've accomplished. My name isn't on a lot of these things, but I know in my heart that I did them and that I made a major contribution to their success. It's good to be able to feel that way about a lifetime of work.

LaBerge: I will just end this then, and say thank you on behalf of the people of California, for all those who don't know what you've done and where your name isn't. But hopefully, through this oral history, they will know.

Belton: Thank you.

X POSTSCRIPT, 2002

On June 19, 2001, two weeks after the last of these interviews, Justice Mosk passed away. He was in his office, working as usual, until the day he died. It was two and one-half months short of his 89th birthday.

On October 22, 2001, Justice Mosk's only son, Richard Mosk, was sworn in as an Associate Justice of the Court of Appeal in Los Angeles, the city where Justice Mosk began his judicial career as a trial judge 58 years earlier.

On November 1, 2001, Peter Belton left the Supreme Court staff after 41 years of service. He took up a new position in the Office of the General Counsel, Administrative Office of the Courts, as Special Consultant on Rules and Projects. His principal goal is to complete the revision of the Rules on Appeal.

And interview with Justice Stanley Mosk, recorded in 1998, follows.

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California State Archives
State Government Oral History Program

Oral History Interview

with

HONORABLE STANLEY MOSK

Justice of the California Supreme Court, 1964-present

February 18, March 11, April 2, May 27, July 22, 1998
San Francisco, California

By Germaine LaBerge
Regional Oral History Office
University of California, Berkeley



Late portrait of Justice Mosk in his chambers, 2000.

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[Interview 1, February 18, 1998]

[Begin Tape 1, Side A]

LaBERGE: We like to start with the beginning and get your full background. So why don't you tell me when and where you were born?

MOSK: I was born in San Antonio, Texas, in the year 1912, on September the 4th that year. My father was Paul Mosk, and my mother Minna Mosk. I was precocious and left Texas at about the age three. The family moved to Rockford, Illinois, then a fairly small city about ninety miles north and west of Chicago, right near the Wisconsin line.

LaBERGE: Why did your family move?

MOSK: My father was a small businessman, and he was associated with a manufacturing firm in New York, and they in effect moved him to open up a store in Rockford. And Rockford is where I went all through the public schools, from grade one through high school.

LaBERGE: Did you have brothers and sisters?

MOSK: I had one younger brother, four years younger than I. He passed away two years ago.

LaBERGE: What was his name?

MOSK: His name was Edward Mosk.

LaBERGE: What do you remember of your grandparents or other relatives?

MOSK: I only knew one of my grandparents, my mother's mother. She lived with us at one time. The rest of my grandparents had all expired before I was old enough to know them.

LaBERGE: And do you remember any of their names?

MOSK: No. My mother's maiden name was Perl, last name.

LaBERGE: Any other relatives?

MOSK: I suppose I must paraphrase this by saying, in my advanced years now, my memory isn't quite what it used to be. So there are some names that I may well forget.

LaBERGE: A lot of people, though, don't know some of those names, that far back. Where did your family come from originally?

MOSK: My mother was born in Hartford, Connecticut. Her father was of German origin. I can't tell you exactly where he came from.

My father was brought to this country as a babe in arms by his mother, who came from what was then Hungary.

LaBERGE: So did he have stories about that?

MOSK: Not really, because as I say, he was a babe in arms and didn't realize anything was happening. So his whole life was spent in this country.

LaBERGE: Do you have any favorite childhood memories from Rockford?

MOSK: Oh, yes. I liked Rockford. It was a small town, and yet it had all the advantages of being within reach of Chicago, so that every summer, my father would put my brother and me in the back of our Dort automobile and we'd go to Chicago to see a White Sox baseball game.

LaBERGE: Did you play baseball as a boy, too?

MOSK: Yes, oh, yes, I played. Softball, and I loved the game.

LaBERGE: Because I understand you're a tennis player, or you used to be a tennis player.

MOSK: Yes, I am. Up until recently, when old age began to get my knees. So I haven't played recently.

LaBERGE: What other activities did you like to do?

MOSK: I was active in an organization in Rockford called the Junior Press Club. It was sponsored by the daily newspaper, the Rockford Morning Star, and it was a great organization sponsored by that newspaper. They had two or three or so students in every school in the city, and they would have them write articles about school activities. The Morning Star published every day at least two columns of school activities, and once a week a full page. Then the students who would write the

articles would clip them out and save them, and if they published X number of articles within the year, they (I was fortunate to do so) would get a free trip to Chicago during the spring vacation, at the expense of the newspaper.

That was a great experience. It taught me journalism, it taught me how to use a typewriter to write my articles, and as a result, I was so enthused that I thought I would go into journalism. I kept that idea in mind until I later discovered that my hero, who was a man named Frank Hicks, a sports editor, was earning \$35 a week. [Laughter] And that, I think, destroyed my attraction for journalism.

LaBERGE: But it certainly influenced you, because you certainly kept writing quite a bit.

MOSK: That's true, and I still use a typewriter.

LaBERGE: Well, I'll be darned. But it isn't a manual like Herb Caen's?

MOSK: No, it's an electric typewriter, but nevertheless, instead of using computers like that, I still peck out my opinions and other material on a typewriter.

LaBERGE: Do you know how to use a computer?

MOSK: Vaguely. [Laughter] I still prefer that.

LaBERGE: What other things were you interested in? Did you read a lot?

MOSK: Yes. I read constantly, and I think literature and English and social studies were my preferable subjects.

LaBERGE: What kinds of discussions did you have around your dinner table?

MOSK: We discussed current events. My parents were particularly interested in Wisconsin politics at that time, since we were only twelve miles from Beloit in Wisconsin. They were strong supporters of Robert M. LaFollette in Wisconsin. I used to hear their talk about him and his political activities.

LaBERGE: And how about religious background?

MOSK: Very modest religious background. My parents were Reform Jews. They didn't believe strictly in ceremony, or serious religious observances. Rockford was a very generous community in that regard. There were no religious prejudices that we were aware of. As a matter of fact, as the only Jewish kid in my senior class of about 400, I was elected president of the class.

An incident occurred that my parents never forgot, laughingly. At graduation ceremonies, we marched into the auditorium, resplendent in our caps and gowns, and I at the head of the line as president of the class, and the orchestra was playing "Onward Christian Soldiers." [Laughter]

LaBERGE: If they weren't singing, did you know that that was the song?

MOSK: Oh, yes. Now, it always occurred to me that nowadays, parents would have filed a lawsuit, and would have tried to restrain the orchestra from playing a religious theme, but my parents were broad-minded, and they just thought it was the funniest thing that they had ever heard.

LaBERGE: So you weren't bar mitzvah?

MOSK: No.

LaBERGE: Any other relatives around, aunts, uncles, cousins, that you have memories of, or that were influential?

MOSK: No, not really. There were no other members of our family in the community of Rockford. So I really never had close contact with cousins, although I had some. As a matter of fact, there's a Mosk family in Houston, Texas, up to this day. But I never see them, unfortunately.

LaBERGE: And what about your mother? What influence do you think she had?

MOSK: Quite a bit. She was a truly remarkable woman.

From Rockford, the family moved to southern California while I was in college. My father passed away, and my mother opened up a bookstore on Eighth Street in Los Angeles, Eighth and Irolo. And as I say, I think she was quite remarkable, because in that bookstore, she read every book that came out so that she'd be able to advise her customers about the theme of the book. She continued operating that store until she was almost ninety years old. She passed away at ninety-two.

LaBERGE: So you have longevity in your history.

MOSK: I hope I have her genes, yes.

LaBERGE: I think you do. Well, before you moved, had she had a job outside the home too?

MOSK: No, she had never worked before in her life, and yet she operated that little shop by herself.

LaBERGE: Well, she must have influenced your liking to read too, if she was . . .

MOSK: It helped, certainly.

LaBERGE: And did your dad continue to work for the same company?

MOSK: Yes, he continued until his death. I don't remember exactly when he passed away, but he was in his late sixties, I think, when he passed away.

LaBERGE: How about summer vacations? Besides going to Chicago for White Sox games, what did you do?

MOSK: One thing I had in Rockford was hay fever. Late August, early September, hay fever would bother me a great deal. So the family would plan vacations in northern Wisconsin, which seemed to be good for that condition of mine.

LaBERGE: On the lakes?

MOSK: On the lakes. There was some little lake called Koshkanong, I believe, up in northern Wisconsin, that we used to visit.

LaBERGE: And what else would you do if you were at home? You played softball.

MOSK: Played softball. There was a vacant lot a couple of doors from our house, and we had a softball field there. I must say, I loved it, until my mother would call me in from the game to start practicing on the piano.

LaBERGE: OK, we haven't heard about that. [Laughter]

MOSK: I had to take piano lessons, and I had to come in and practice. I think because it interrupted baseball games so frequently, I ended up hating the piano. And I can't play a note today.

LaBERGE: You told me a little bit about your favorite subjects, the area. How about teachers? Were there any that were particularly influential?

MOSK: Rockford High School had some excellent teachers, I must say. I can't think of any with whom I was disappointed. They were, I thought, reasonably challenging and enthusiastic about what they were doing. They were singularly unattractive people, [Laughter] but on the other hand, they were well suited to their work. .

LaBERGE: I take it that you liked school.

MOSK: I liked school very much.

LaBERGE: And what other activities there besides. . . . For instance, class president, and the journalism?

MOSK: I was editor of the school paper, the Rockford High School Owl. I was a captain in ROTC [Reserve Officer Training Corps]. And I was on the school debate team. I kept busy.

LaBERGE: Yes. Did you always know you were going to go to college?

MOSK: Oh, yes. A devotion to education was instilled in me constantly, not only in school but at home.

LaBERGE: How did you pick the University of Chicago?

MOSK: I tried to get a scholarship there, and I visited the school. I didn't get a scholarship, but I liked it so much on a visit that. . . . And I think I was influenced a little by the fact that there were two professional baseball teams in Chicago. And I was also attracted by the president of the university, Robert Maynard Hutchins, who was certainly an inspirational person.

LaBERGE: So even without a scholarship . . .

MOSK: I went there anyway. Of course, tuition wasn't as huge as it is today. I think it was, if my recollection serves me, it was about \$150 a quarter. Chicago was on the quarter system, three quarters in the school year and one quarter in the summer.

LaBERGE: Had you had part-time jobs growing up?

MOSK: No. My work with the Junior Press Club took up my time.

LaBERGE: So when you got to Chicago, were you going to major in journalism then, or education?

MOSK: No, I was going to major in the social sciences.

LaBERGE: Was there still the Great Books program, or that special . . .

MOSK: That hadn't started yet. It was started during my sophomore year. That was a great program; I wish I had been part of it.

LaBERGE: How did you decide to go into law?

MOSK: I got to know some our. . . . Well, to backtrack, I joined a fraternity, then called Phi Sigma Delta, and a lot of the alumni would come around the fraternity for dinner

sometime. I saw their enthusiasm at being a lawyer, and since that was closely related to the social sciences, it persuaded me that that's the direction I ought to go.

LaBERGE: Did you live at the fraternity?

MOSK: I did. 5625 Woodlawn Avenue, Chicago.

LaBERGE: Is it still there?

MOSK: Still there. The fraternity has faded out, and I think another fraternity took it over or something like that.

LaBERGE: What did you do for social activities in college and law school?

MOSK: Oh, I got to know politics there. Chicago had a somewhat notoriously corrupt city administration, but not. . . . The university area would always elect a liberal, honest city councilman. He never had any great influence at City Hall, but he was always a pleasure to work with, and a lot of us students became active in the city councilman's campaign. I don't remember his name right now, but that was the first time I worked in a campaign. That would be the old-fashioned campaign work, like going from door to door, punching doorbells, passing out literature, and that sort of thing. And on an election day, watching at the polls to make sure there was no obvious corruption.

LaBERGE: So this was before Mayor [Richard] Daly?

MOSK: Yes.

LaBERGE: OK. I don't have my dates all straight.

MOSK: Yes, that was.

LaBERGE: And so that continued; that was just the beginning of your political . . . ?

MOSK: Yes. But it increased my interest in politics.

LaBERGE: And what about on campus? Were there campus politics too?

MOSK: Yes, somewhat. One of my fraternity brothers was ultimately elected president of the senior class, and we helped him out.

LaBERGE: During college, what did you do during the summers?

MOSK: You know, I really don't remember anything significant.

LaBERGE: But you'd go back home?

MOSK: I'd go back to Rockford.

LaBERGE: But no summer jobs?

MOSK: Nothing of consequence.

LaBERGE: What I'm trying to get is, were there any significant things that influenced you later?

MOSK: Nothing comes to mind.

LaBERGE: And did your brother also go on to college?

MOSK: Yes, but he was four years behind me, and by then, my family had moved to southern California, from Rockford to southern California. I stayed on in Chicago, and when my brother went to college, he went to UCLA.

LaBERGE: What impact did the Depression have on you and your family?

MOSK: It had a great effect. First of all, my father's business didn't exactly collapse, but it virtually did so, and that as a result, he moved to Los Angeles. Ultimately, while I got my bachelor's degree at the University of Chicago. . . . Incidentally, their degree was called a bachelor of philosophy, Ph.B. If you say it fast enough, it will confuse people to think that it's a Ph.D. [Laughter]

I got my bachelor's degree. At that time at Chicago, your last year as an undergraduate could be your first year in law school, so that the whole process took six years instead of seven. So I had a year of law school, got my bachelor's degree, and by then, as I indicated, my family had moved to southern California and they couldn't afford to keep me at Chicago any longer. So I came out to Los Angeles and went to Southwestern University for my last two years of law.

LaBERGE: So is that where you got then your law degree?

MOSK: That's where I got my J.D.

LaBERGE: And living at home?

MOSK: Living at home. And those were the Depression days, very difficult days. I did some work under a government program that helped students out, and I can't remember what sort of work I did, but it qualified to get a student loan.

LaBERGE: What were your favorite fields in law school?

MOSK: I was always pointing toward the ultimate bar examination. [Laughter]

LaBERGE: You hadn't thought about, What am I going to do?

MOSK: Not at all. I just hoped I'd be able to ultimately make a living.

LaBERGE: Had you intended to do trial work?

MOSK: I hoped to do some trial work. But the major law firms were not doing any hiring in those days. They were just holding on to what they had. So I had to open up an office by myself. I took an office in a suite with a group of about four other lawyers. That worked out pretty well, because we shared expenses of rent and library and secretarial services and so forth, but each one was totally independent in his work.

But it was quite a struggle. I remember--and this is apocryphal, of course--but I remember coming home and telling my wife, "I had a wonderful day today, I had a twenty-five-dollar case and two small ones." [Laughter]

LaBERGE: Let's step back for a minute and tell me about taking the bar exam. Was that an experience?

MOSK: Yes, an experience I'm glad I never have to have again. It was difficult.

LaBERGE: Did they have bar review classes then?

MOSK: Yes. There was a professor at Southwestern who conducted a review class. He was a miserable fellow, but he was a good teacher, and he covered the subjects well enough so that I did pass, first time.

LaBERGE: Did you have any memorable law professors?

MOSK: Yes, one very significant one: [California Chief Justice] Phil [S.] Gibson.

LaBERGE: Oh! At Southwestern?

MOSK: At Southwestern. I got to know him very well, which turned out to be fortunate, because our paths crossed many times thereafter.

LaBERGE: What classes did he teach?

MOSK: Some aspects of civil law, but I can't really recall specifically. But he was very good. He was a tough teacher, but effective.

LaBERGE: You mentioned coming home to see your wife. Why don't we just cover that part: how did you meet your wife?

MOSK: I was lucky. A close friend of mine invited me to come and play bridge one evening at the home of a lady friend of his. So I went along, and the lady friend proved to

be attractive and bright, and later on I asked him if he'd mind if I took her out.

[Laughter] Anyway, that started a romance, and we got married shortly thereafter.

LaBERGE: And her name was?

MOSK: She's since passed away. Her name was Edna Mitchell.

LaBERGE: Besides being a bridge player, what was she. . . Was this in Los Angeles?

MOSK: Yes.

LaBERGE: What was she doing?

MOSK: She was working at something, and I can't remember exactly what it was now. But we had a very happy marriage, many decades.

LaBERGE: And children?

MOSK: Yes, I have one son, Richard Mitchell Mosk.

[End Tape 1, Side A]

[Begin Tape 1, Side B]

MOSK: And my son turned out to be a very remarkable young man. He went to Stanford as an undergraduate, and ultimately to Harvard for law, and he practiced in Los Angeles. Today, he's the only person I know who holds three full-time jobs. First of all, he's a partner in a major law firm. Secondly, he's chairman of the board that rates motion pictures. And thirdly, he's a judge on the Iran-United States Claims Tribunal that sits over in The Hague, Holland. He flies to Holland one week every month to hear cases over there at that tribunal, where he's one of the three American judges. So as I indicate, holding three full-time jobs makes him quite a remarkable fellow.

LaBERGE: I'd say. You must have had some influence on his choice of a career, or it's hereditary.

MOSK: Well, yes, in an amazing way. Realizing that children are frequently contrary, I tried to tout him off on every other profession. "Well, why don't you go into teaching? Why don't you go into something else? Why don't you go into journalism?" Every time I'd make a suggestion, he'd reject it. By rejecting all of

those, he ended up in law. So I guess you have to recognize the perversity of children. [Laughter] It helps.

LaBERGE: And so he grew up in San Francisco?

MOSK: No, Los Angeles.

LaBERGE: Back to your beginning law career: when you opened up your own office, how did you know these other fellows? I assume they're fellows.

MOSK: Yes, they were. I don't know how I met them. Maybe they advertised or something, I'm not sure.

LaBERGE: And how did you get clients?

MOSK: It wasn't easy.

LaBERGE: Because there certainly wasn't advertising.

MOSK: No. Well, through a couple of sources. One, my wife's father was a manufacturer of cosmetics, and through him I got a number of cases from his factory.

LaBERGE: What was his name?

MOSK: Max Mitchell. They were Canadian by origin, came from Winnipeg. My wife was born in Winnipeg.

LaBERGE: Anything else about your wife and her background? Because your son might like later to . . .

MOSK: Nothing particular. My son did know my wife's father.

LaBERGE: Was she a homemaker?

MOSK: Yes.

LaBERGE: You were in private practice, I have from 1935 to 1939?

MOSK: Right.

LaBERGE: What areas, or were you just taking whatever you could get?

MOSK: Took whatever came in the door. And I had some interesting matters. I remember a minister recommending a man who was charged with molesting a young girl, and he asked me to defend this fellow. I did go to trial and defend him, but he was ultimately convicted. But I got him deported, instead of going to jail, got him deported to Canada. (He was a native of Canada.) I remember, oh, eight or ten years later, I got a letter from this man's wife enclosing a check for \$100 and said, "I

realized I still owe you on your fee for defending my husband, and here it is. I'm sorry I couldn't get it to you sooner." Years later, she sent me a check for my fee.

LaBERGE: Did you go to trial on other issues too?

MOSK: Oh, some personal injury cases. Nothing significant.

LaBERGE: Do you remember what your impression was of the judicial system or the judges you were meeting?

MOSK: I believe I thought well of the judiciary generally. I don't recall any serious disappointments. Outside of losing cases now and then. [Laughter]

LaBERGE: How do you think that experience has influenced you as a judge?

MOSK: It was the Depression, I think, that impressed me most. The human difficulty. Those were the days in which [President] Franklin [D.] Roosevelt first got started, and indicated a desire to help those who were in greatest need. I think that's one of the things that moved me toward the Democratic party at the time. So I started working in Democratic politics at the local level. I remember helping a candidate for the assembly in what was then the 59th Assembly District out in the western part of Los Angeles, a fellow named Robert Heinlein.

LaBERGE: The author?

MOSK: The author. [Laughter] I saw that working its way through your mind. He wrote mystery [science fiction, actually] novels. He was a retired naval officer, retired for physical disability, and his first inclination was to go into politics. He ran for the assembly and lost to the Republican, Charles Lyon. Then he turned to writing, with remarkable success.

LaBERGE: I have a son who really loves science fiction. That's how I had heard the name. So you kept up with him?

MOSK: Well, he's passed away. But no, I never did get to keep up with him. He got out of politics completely and devoted himself to literature.

LaBERGE: Your wanting to help people who were depressed or the downtrodden, did that have any roots, say, in your upbringing? Or where did that motivation come from?

MOSK: I suppose it came from the teachings of my parents, who themselves were always struggling to make a living. That certainly had an influence on me, I'm sure, and that's why I've always been an unashamed liberal.

LaBERGE: In the one interview that you did, and I sent you the outline for it, you did cover a little bit of the Democratic politics, and I don't know if you've covered it sufficiently, if we should talk some more about it.

MOSK: I must confess, I haven't had time to review that. It just arrived yesterday.

LaBERGE: OK. It's just the table of contents. Well, why don't we just go on.¹

Tell me more about your entrance into Democratic politics.

MOSK: I think my first interest was in or through Upton Sinclair, who was a little farther to the left than I would desire. He was pretty much of a socialist. But in support of his campaign in 1934, an organization called EPIC was organized, and I thought it was a very useful entree to political activity. And although I didn't give it a great deal of attention, because I was struggling to become a lawyer. I did participate, and concentrated somewhat on a campaign in '34 for Culbert Olson, who was running for state senator.

In those days, the counties had only one senator. There was only one state senator for all of Los Angeles. And Culbert Olson had fairly recently come to California from Utah, where he had also been a state senator. So I participated in that campaign of his to some extent, and got to know him. He was elected, though Sinclair was defeated.

Four years later, Olson ran for governor, so I really pitched in to that campaign.

LaBERGE: And by that, you mean going door to door, and what else?

MOSK: Yes. Well, I did more administrative work in the office at that time. And that probably was fortunate for me, because I really got to know Olson on a personal level.

LaBERGE: And you were doing this in your spare time?

1. See Stanley Mosk, "Attorney General's Office and Political Campaigns, 1958-1966," an oral history conducted 1979 by Amelia R. Fry, in "California Constitutional Officers," Regional Oral History Office, The Bancroft Library, University of California, Berkeley, 1980.

MOSK: Yes.

LaBERGE: Was your wife also interested in politics?

MOSK: Not particularly then. She became so later. [Laughter]

LaBERGE: By osmosis.

MOSK: Yes.

LaBERGE: So this is how you became Culbert Olson's aide.

MOSK: Yes. Olson was elected. He went up to Sacramento, and shortly after he got there, he called me and asked if I'd come up and be his executive secretary. Well, it took me about fifteen minutes to wind up my law practice. [Laughter] And moved the family, my wife and I, to Sacramento.

LaBERGE: What did you think you would be doing?

MOSK: Well, nowadays, governors have dozens and dozens of secretaries. In those days [1939], a governor had only three secretaries. He had an executive secretary, an assistant secretary, and a private secretary, and that was his staff. So we handled everything. One of the secretaries handled patronage matters. I handled the legal problems: executive clemency, extradition, legislative vetoes and matters of that sort. It was a great experience. It expanded my legal knowledge, and also got me to know state government from the inside.

Olson was a remarkable person to be associated with. Indeed, he was the most honest person I think I've ever known. That was his undoing, because if a legislator were with him 90 percent of the time, to Olson he was no good, because he opposed him 10 percent of the time. We couldn't deter him from having those feelings. But as I say, it was his ultimate undoing, because he never could build a big consensus, an effective consensus.

LaBERGE: Was that a big decision for you, to go up and do that?

MOSK: No.

LaBERGE: You didn't feel like, Gee, I'm not going to be a lawyer any more?

MOSK: No, I thought it was as challenging as ultimately it became.

LaBERGE: Any other anecdotes about him or his dealings with the legislature?

MOSK: No, nothing specific comes to mind.

LaBERGE: What were your impressions of Sacramento?

MOSK: Well, I liked Sacramento. My wife and I bought a little house there. I think we paid about \$9,500. Today the house probably is worth a quarter of a million dollars. Our son was born my first year in Sacramento.

LaBERGE: So happy memories.

MOSK: Happy memories, right.

LaBERGE: When you were there, I guess that's when war broke out?

MOSK: Yes, it did, you're right. The war broke out [1941], and we had lots of problems with the army, and the imprisoning of all the Japanese-American citizens. I don't suppose we became as irate about that development as we should have. Olson would be directed by the army people in connection with orders and seizing Japanese Americans and that sort of thing. It was wartime, and the future of our country was at stake, so I don't think we indicated our opposition to it in any way. It would have been unpatriotic, I suppose.

LaBERGE: And you yourself, were you in the army?

MOSK: Yes. That was a little later, though.

LaBERGE: Did you volunteer?

MOSK: Yes. Well, Olson was defeated for reelection by Earl Warren. In his final days, he offered me a position as a superior court judge in Los Angeles, so I accepted that, and went back to Los Angeles as a judge. While I was on the bench, I left the superior court and volunteered for the army, so I did ultimately serve in the army.

LaBERGE: Where were you serving?

MOSK: I did my basic training with the engineers at Fort Leonard Wood, Missouri, and then somehow, and I don't remember how exactly, I transferred to the transportation corps. I was assigned to the port of embarkation at New Orleans, from which ships went out into the Pacific. If you have to fight a war, New Orleans is not a bad place.

LaBERGE: Were you there the entire time?

MOSK: Yes.

LaBERGE: You weren't sent overseas.

MOSK: As a matter of fact, my outfit was sent overseas just as the war ended, and by then, I wanted to get out and get back on the bench. So I remember Phil Gibson was then the chief justice, and I frantically called Phil from New Orleans--the war was now over--and I said, "Get me out of here!" I was discharged shortly thereafter and went back as a superior court judge.

LaBERGE: Was your family able to go with you to New Orleans?

MOSK: No. My wife had some kind of a job. I wish I could remember exactly what it was, but she was working. I was a private making fifty dollars a month, and I was occasionally writing home asking her for money so I could go to some of those New Orleans restaurants. [Laughter]

LaBERGE: How did the experience of the war and the whole thirties and forties influence you later?

MOSK: I don't know that the war had any significant influence on me. I felt guilty at not being in the service when so many of those my age were in. And that's why I left the comfort of the superior court judgeship to volunteer as a private.

LaBERGE: Because you didn't . . .

MOSK: I was exempt under the law, yes. But there was that guilt at seeing those my age serving, and I was enjoying comfort, and it bothered me.

I must give credit to Earl Warren as governor then. He never filled my position while I was in the service, so that it was there when I came back. He could have made an appointment, because I had resigned.

LaBERGE: Did you know him personally?

MOSK: I did not at that time. Well, let me correct that. I represented the governor on some boards and commissions where Earl Warren, as then attorney general, was also a member, so I did get to know him somewhat that way.

LaBERGE: How many other judges do you think left the bench during that time?

MOSK: I know of one in Merced County, a judge left the bench. But he had the misfortune of having his term expire while he was away. He got his name on the ballot for reelection, and somebody, a lawyer in Merced, put his name on the ballot to run against him, and defeated him while he was away, which I always thought was

really unfair. But it turned out to his advantage ultimately, because he became a lobbyist later on in Sacramento for liquor interests, and I'm sure that enhanced his fortune much more than being a judge would have.

LaBERGE: I think we'll go back to when you became a judge in the superior court [1942]. How did the appointment process happen, and confirmation?

MOSK: This is the greatest example of pure luck that I have ever experienced. In the closing days of the Olson administration, there were three vacancies on the superior court in Los Angeles and two on the municipal court. The governor called me in a couple of weeks before the end of his term and said, "Stanley, I want you to make out commissions for Harold Landreth for the superior court, Harold Jeffries for the superior court, and Dwight Stephenson for the superior court, Gene Fay for the municipal court, and you take the other municipal court vacancy."

Well, I thanked him profusely. At age thirty, a municipal court appointment was all that occurred to me as a possibility. I went out and made up the commissions, brought them in, the governor signed them. But by then, it was after five o'clock, and the secretary of state's office was closed. So I locked them in my desk, intending to file them the following morning.

In the middle of the night, the governor called me at home and said, "Stanley, have you filed those commissions yet?" I said, "No, Governor, I apologize, I didn't get to the secretary of state's office until after five o'clock." He said, "Well, good. I can't leave Bob Clifton off. So put Bob Clifton in your place on the municipal court." Well, my heart sank. But he said, "And you take Dwight Stephenson's place on the superior court."

LaBERGE: Oh, my gosh!

MOSK: So just by about as clear an example of luck as I can imagine. By not getting to the secretary of state's office by five o'clock, I was elevated from the municipal to the superior court.

LaBERGE: And you probably thought you had done something wrong. [Laughter]

MOSK: Certainly fate was with me. I've never forgotten that example of just pure good fortune. And it changed my whole life, because as a superior court judge, later on I ran for attorney general, and so on.

LaBERGE: In filing that with the secretary of state, you didn't need any confirmation or anything like that?

MOSK: No, not for trial judges.

LaBERGE: And did you have to run for . . . ?

MOSK: I had to run for reelection shortly thereafter, and I was opposed by two municipal court judges. One was Leroy Dawson, a man who was a disabled veteran of World War I, a very well-known municipal court judge, and the other was a woman, Ida Mae Adams, who had run for judge several times. She was a formidable opponent. I remember she used to start her political speeches at clubs by saying that her opponent, she'd refer to "this young man who's occupying the office." Let's see, how did she put that?

In any event, I had to have a runoff with her. I didn't get a majority the first time, and had a runoff. It was a difficult campaign. That was the first time my wife really got involved in political life, and the problem of raising a few dollars for the campaign.

LaBERGE: How did you do that?

MOSK: Well, I hadn't the foggiest notion of how to do it at first, but I remember calling on. . . . The first person I went to see was a man who was somewhat active in politics, a man named Lawrence Harvey who was a manufacturer. I remember he gave me a \$1,000 campaign contribution and I was just overwhelmed.

LaBERGE: So it was just really grassroots, asking for help?

MOSK: Grassroots, asking for help. Nothing I could do for him as a judge, but he was a good friend, and willing to help, and had the means to do so.

LaBERGE: Were you pretty well established in Los Angeles by then? Did you know a lot of people?

MOSK: Yes, moderately so.

LaBERGE: Mainly through politics?

MOSK: Yes, through political activity primarily. Going out and making speeches. As a judge, I had to stay out of partisan politics, but I'd go to Rotary Club meetings and various organizations and have a few anecdotes about cases to get them laughing and applauding.

LaBERGE: This was your debate and your speech experience.

MOSK: Yes, it helped.

LaBERGE: Do you still do that?

MOSK: Yes.

[End Tape 1, Side B]

[Begin Tape 2, Side A]

LaBERGE: When we turned the tape over, you said that you gave a speech on humor in the courtroom.

MOSK: Yes.

LaBERGE: Can you give me a couple of anecdotes?

MOSK: I developed a little talk on humor, just to keep things a little light. I found that there is humor in which the judges have a little fun with lawyers appearing before them, and the lawyers, of course, must laugh at the jokes from the bench. [Laughter] And then there's a second kind where the lawyers somehow manage to get the last word without antagonizing the judges. And then there's another category I developed where the judges try to help a struggling lawyer who's trying to explain his position, and the lawyer just can't understand it and doesn't accept the help from the court. I found examples of all of them.

LaBERGE: When you went on the job for the first day as a superior court judge, what kind of training or orientation did you have?

MOSK: At first, very little. The presiding judge of the superior court was a man named Emmet Wilson. When I reported for assignment, he wasn't about to give me any assignment, because he wasn't very happy at having this thirty-year-old youngster on the superior court. So I probably would have cooled my heels if it hadn't been

for a man that I had gotten to know, Alfred Paonessa, who was a superior court judge and sitting in Long Beach.

So Al Paonessa went to Presiding Judge Wilson and said, "If you have no other assignment, I'd be very glad to have Judge Mosk with me in Long Beach." So my first assignment then was to Long Beach.

And Al Paonessa was a tremendous help to me there, in the form of judging. He was a charming man. We had a lot of fun. The superior court in Long Beach was then in the Jurgen's Trust Building, which overlooked the beach. At noontime, I'd come to in to visit with Paonessa and have lunch perhaps with him, and there he'd be with his binoculars, looking down on the beach at all the pretty girls.

[Laughter]

LaBERGE: Another humor in the courtroom.

MOSK: Right. So I can't say enough about what kind help he gave me in getting started on. . . . He never told me how to decide a case, but the form and that sort of thing.

And I must say with a certain amount of pride, after six months, I was reassigned back to downtown Los Angeles, and the Long Beach Bar Association passed a resolution praising my work there. So that gave me a good start.

LaBERGE: Do you remember the first cases that you had?

MOSK: One of the first cases was a personal injury case in which Joe Ball, a very prominent lawyer, appeared. He was one of the peers of the bar, a great lawyer. It was a personal injury case, and he lost it. But then he got me reversed on appeal.

[Laughter]

LaBERGE: For instance, for that first case, how would you prepare for it beforehand?

MOSK: I don't really remember anything specific, but I must have.

LaBERGE: In general with your cases, how would you prepare?

MOSK: Yes, well, I would review the file, the record, and have a pretty good idea of what I would do once I ascended the bench.

LaBERGE: Did you have to kind of bone up on rules of evidence, and how did . . . ?

MOSK: Yes, that was . . .

LaBERGE: Because you'd been kind of out of that for about four years, I guess.

MOSK: Yes, for some time. But I would do whatever was necessary in the way of preparation beforehand.

LaBERGE: And how did you happen to then get reassigned back to Los Angeles?

MOSK: I think it was just a matter of custom. The assignments were for six months; my six months were up, and they moved me back to L.A. And for most of my period there, I was in Department 14, which was on the top floor of the old Hall of Records building.

LaBERGE: From then on, was it Emmet Wilson who originally didn't want you there?

MOSK: That's right, but by then, he was no longer presiding judge.

LaBERGE: I see. How did you get your assignments?

MOSK: They came from the presiding judge.

LaBERGE: And was the presiding judge rotating?

MOSK: Yes. It was an annual appointment.

LaBERGE: Even in that early time, can you see how you started developing your philosophy?

MOSK: Not exactly. I'd just take each case as they came. And many of them proved to be boring. It would be just two other automobiles colliding in another intersection, and trying to ascertain fault.

LaBERGE: Could you foresee yourself doing that for many years?

MOSK: At first it didn't trouble me, but it's many years later that it began to get somewhat boring. That's why I ultimately took a chance to run for attorney general.

LaBERGE: How did that come about?

MOSK: Pat Brown, who had been the attorney general, was then running for governor, so there was no incumbent attorney general. I figured my chances were as good as anyone else's.

LaBERGE: And did you know him well?

MOSK: I knew Pat Brown pretty well, yes.

LaBERGE: How did you stay involved in the Democratic party while you were on the bench?

MOSK: I really didn't stay in touch with the party as such. But I did my share of speaking to generally nonpartisan groups, service clubs, luncheon clubs. Oh, I belonged to the

Rotary Club and that sort of thing, and gave my share of talks about legal or quasi-legal incidents that might interest lay persons.

LaBERGE: How did your wife feel about you running for attorney general?

MOSK: She accepted it gracefully. [Laughter] As a matter of fact, she became active then in women's Democratic groups. She was very helpful.

LaBERGE: When you decided to run, did you then step down from the bench?

MOSK: Yes. I didn't have to resign, so I always kept that possibility of returning. But I took a leave of absence and I sent my salary check back every month.

LaBERGE: How did you go about campaigning for that, then?

MOSK: There was a Democratic political group.

LaBERGE: Is it the CDC [California Democratic Council]?

MOSK: CDC. And I got help from two persons who pitched in to my campaign. One was a fellow named [Glen] Wilson, recently passed away. And the other was a woman named Nancy Strawbridge. They were a tremendous help in getting endorsements from CDC chapters, and that proved to be really my source of ultimate victory.

I was opposed in the primary by a state senator from San Francisco, Bob McCarthy, and I must say that turned out to be the cleanest campaign I have ever known. Neither one of us ever said an unkind word about the other. As a matter of fact, I hadn't known him before, but ultimately Bob McCarthy became a very good friend of mine.

And I was fortunate in the primary; I defeated him, but by a very narrow margin comparatively. I think it was 135,000 votes statewide. I trailed for forty hours after the polls closed, because in San Francisco, they had voting machines, and in Los Angeles, everything was done by hand. His strength was here and mine was down there. So for forty hours, Bob McCarthy was winning, and his friends were claiming victory, though he never did. I always felt sorry for him: he thought he won, and yet it was snatched away from him in late returns. And as I say, he endorsed me in the finals, and we became good friends.

The finals I won by over a million votes.

LaBERGE: And who did you run against?

MOSK: The Republican nominee was Richard Nixon's successor in his congressional district, Pat Hillings. It probably did him good to lose, because he ultimately became the lobbyist for Ford Motor Company in Washington.

LaBERGE: Well, that must have been something, to really have a statewide campaign.

MOSK: It was.

LaBERGE: I would assume people in the state had heard the name Bob McCarthy, but maybe not yours.

MOSK: Exactly. But it was fun to campaign around the state in those days. I really enjoyed it. I met people, the kind of people I normally wouldn't have known. I remember climbing under a locomotive in Roseville to shake hands with a grimy engineer. That sort of thing was fun. And it didn't take the kind of money that it takes today to run a campaign. I don't think we spent over \$85,000 in the primary, statewide.

LaBERGE: Was your mother still alive then?

MOSK: Yes.

LaBERGE: I just wondered what was her reaction to how her son was . . .

MOSK: Yes, she was. She was very happy for me.

LaBERGE: I think that you pretty much covered that whole period in this other interview, so I think, shall we stop?

MOSK: Yes, a good time.

LaBERGE: And then next time, we'll start with the [California] Supreme Court.

MOSK: Very good.

[End Tape 2, Side A]

[End of Session 1]

[Interview 2, March 11, 1998]

[Begin Tape 3, Side A]

LaBERGE: When you were attorney general in 1964, how did Pat Brown then appoint you to the supreme court, and how did you make that decision?

MOSK: Well, I served as attorney general for the four-year term, and then I was reelected for another four-year term. But by then, political campaigning in California had become a matter of raising tremendous funds and organizing a political campaign. Frankly, raising funds did not appeal to me at all. I remember going in to a reception, or a public dinner, and looking at everyone with a dollar sign over his head. I began to hate myself for that.

So when there was a vacancy on the supreme court and Pat Brown offered it to me, I decided to just get out of politics completely and devote my time to the law, which I have always enjoyed.

LaBERGE: How was that, to make that decision? Because you really liked politics, or you were interested in politics.

MOSK: Yes. Frankly, I liked politics. I liked going to meetings of varied groups. I liked getting to meet and know people of various occupations and personal characteristics. It broadens one's perspective. So I enjoyed that part of politics, but it was the fundraising and the need to expend money for printing of literature, mailing it out, and running ads in newspapers, and nowadays on television, all of which requires tremendous resources. That aspect of politics never agreed with me.

LaBERGE: You must find today's brouhaha over campaign spending interesting if nothing else.

MOSK: Yes, it is, and it's distressing, I think, that candidates feel it's necessary to raise tremendous sums and to solicit persons and organizations for funds. That's too bad.

LaBERGE: When Pat Brown appointed you, how did the confirmation procedure go?

MOSK: There was no problem at all. It was very routine. Apparently, I had not antagonized enough people to come in and oppose me.

LaBERGE: And Justice Burke was appointed at the same time?

MOSK: Yes. That showed, I think, Pat Brown's character to a certain extent. After all, I was a Democrat; Louis Burke was a Republican. And he appointed us at about the same time. And Lou Burke was a first-rate appointee, I must say. We worked together very well.

LaBERGE: You've seen a lot of people be appointed and lived through a lot of governors. What is your opinion of the appointment process and how someone is chosen?

MOSK: You never know what impelled a governor, any governor, to make an appointment of him or her over others who were perhaps seeking the office. I assume every governor has in the back of his mind certain qualities and characteristics that he wants on the court, and he makes the appointments accordingly.

I think Pat Brown genuinely attempted to appoint persons with qualifications. He appointed people like Mathew [O.] Tobriner and Ray [Raymond L.] Sullivan. They were just outstanding persons. And of course, Lou Burke turned out to be first-rate as well.

LaBERGE: What qualifications do you think a supreme court justice needs?

MOSK: He needs a professional background, an education, and an experience. I don't think he must necessarily have been a judge before, although that in many instances is helpful. After all, some of the greatest jurists on our United States Supreme Court had no judicial background. I had in mind people like Earl Warren and Louis Brandeis, and many others that I could catalogue, who had no judicial background and yet turned out to be quality members of the highest court in the land. As a matter of fact, you don't even have to be a lawyer to be on the United States Supreme Court.

LaBERGE: Oh, really? I didn't realize that. Have there been any nonlawyers?

MOSK: No, there haven't been. But theoretically, there could be, and as a matter of fact, in reading a biography of Franklin Roosevelt, he did seriously consider some nonlawyer members of the high court. But I think he was dissuaded from doing that.

LaBERGE: So education and some background. In education, do you mean the law degree?

MOSK: Yes.

LaBERGE: And having passed the bar. I was thinking about, there was controversy a little bit over William Clark, is that right?

MOSK: Yes, there was, to some extent.

LaBERGE: What about judges being appointed either for merit or for political reasons? Could you talk about that?

MOSK: Inevitably, a governor has a political philosophy regarding criminal law, and perhaps aspects of civil law, and it's understandable that he would appoint persons of similar point of view in making his selection. At the present time on the California Supreme Court, there are six Republicans, and I am the only Democrat. I don't resent that one bit, because they were appointed by Republican governors, [George] Deukmejian and [Pete] Wilson. I think it's inevitable that they would appoint persons of their particular philosophy, and I think they have a right to do so. If a Democrat is elected governor, I assume he will appoint persons of a different political philosophy.

LaBERGE: When you were appointed, did you have any kind of orientation, or did someone walk you through the steps of what you were going to be doing?

MOSK: No, not really. As I recall, I was on the bench a week after being appointed, and hearing a series of cases.

LaBERGE: Do you remember your first day?

MOSK: No, I suppose I was more worried about whether my robe would fit, [Laughter] and not the details of the impending cases.

LaBERGE: That's so funny, I would expect a woman to worry about that! Did you have to order it ahead of time, or be measured, or. . . ?

MOSK: Well, I believe I still had a robe left over from my days as a superior court judge, and I was able to use that until I could order a fresh one.

LaBERGE: What about meeting your staff? Would they have helped to orient you a little bit?

MOSK: I was sorry to have left the staff I had at the attorney general's office. I had some wonderful people as my appointees. A woman named Nancy Strawbridge had been with me all of my time as attorney general.

LaBERGE: What was her position?

MOSK: She ran the office. And deputies like Howard Jewel, who later married Nancy Strawbridge. And Charlie [Charles] O'Brien was one of my top deputies, and Richard Rogan. They were a wonderful group of people that I enjoyed associating with, and I was sorry to have to leave them when I left the attorney general's office.

I walked into the supreme court office and had to pick some law clerks, and I think my first law clerk was a Harvard Law graduate named John Hansen, who today is a top lawyer in San Francisco.

I've enjoyed the opportunity to have law clerks and to follow their careers after they leave the office. One of them is now a municipal court judge in Santa Monica, Larry Rubin. Four or five of them are law professors at various schools, one of them at a university up in Canada. I take some pride in their accomplishments.

LaBERGE: Oh, I'm sure you do.

Coming to the Supreme Court meant also a move from Sacramento, is that right?

MOSK: Yes. I really live in a United Airlines plane. [Laughter]

LaBERGE: And you always have?

MOSK: I always have. As attorney general, we had offices in San Francisco, Sacramento, and Los Angeles. I established a new office in San Diego, which was a growing community. So I deliberately tried to spend some time in each one of the offices.

LaBERGE: So then you didn't need to move to San Francisco?

MOSK: Not really. Although knowing that I would be in San Francisco most of the time as member of the court, I finally did buy a cooperative apartment. So there's a certain permanence about that.

LaBERGE: But otherwise, where was your main. . . ?

MOSK: I kept my principal residence in Los Angeles.

LaBERGE: Even when you were attorney general?

MOSK: Even when I was attorney general. I would stay in hotels in Sacramento and San Francisco.

LaBERGE: So do you feel like. . . Is it an Angelino, is that the term?

MOSK: Yes, that's the term. I did then, but now I register to vote here in San Francisco, so this is my real residence now.

LaBERGE: Your first days at the court were at the Civic Center?

MOSK: Yes. The court was housed in the Civic Center, where we stayed until the earthquake, when was it, of '89.

LaBERGE: So there were permanent staff there when you got there?

MOSK: Yes.

LaBERGE: Research attorneys and so forth?

MOSK: Yes, there were some available.

LaBERGE: So did you inherit some, or. . . ?

MOSK: Yes, I did. But I was able to bring in my own selections. As I mentioned, John Hansen was the first one.

LaBERGE: And what about Peter Belton?

MOSK: Yes. He came to me. As I went on the court, Justice [B.] Rey Schauer retired, and he called my attention to Peter Belton, who had worked for him for a few years, and told me that I'd be doing myself a great service if I took Peter Belton on. I interviewed him, was impressed, and so I did take Peter with me. He's been with me all thirty-three-plus years that I've been on the court. He has a great legal mind. He could have made a fortune in private practice except for the fact he has a serious physical disability. He's a paraplegic, and it's a little difficult for him to get out into the cold, cruel world.

LaBERGE: Do you remember the first case that you heard?

MOSK: No, I don't.

LaBERGE: How about the first opinion you wrote?

MOSK: I should remember it, but I don't.

LaBERGE: The first dissent? [Laughter] Or maybe there weren't so many those years.

MOSK: No, there weren't as many in those years, because I found it difficult to disagree with legal giants like Mathew Tobriner and Raymond Sullivan, and the chief justice at that time . . .

LaBERGE: Roger Traynor?

MOSK: Roger Traynor.

LaBERGE: Did he come in just when you came in? The same year, I didn't know, but . . .

MOSK: Yes, he succeeded Chief Justice Phil Gibson at that time. So he rose from associate justice to chief justice. I was appointed to succeed him as associate justice.

LaBERGE: When you first come in, is there some kind of feeling like, Gee, I don't know what I'm doing, and I'd better wait to find out what the . . .

MOSK: Well, no, not really, because as attorney general, I had been responsible for producing over 2,000 opinions during my six years in that office. The procedure was not totally dissimilar to the procedure on the court, in that you'd have an issue, you'd discuss it with a deputy, the deputy would draft a proposed attorney general's opinion, you'd make corrections or additions or deletions from that, and it would ultimately be published.

The procedure on the court is not totally dissimilar in that you worked with your law clerks much the same way.

LaBERGE: And you wouldn't be reluctant to speak your mind with the other justices, being a newcomer?

MOSK: No. I think because I'd had a certain relationship with them when I was attorney general. I'd appeared and argued before them. So there was no fear of expressing a view that was in agreement or contrary to theirs.

LaBERGE: Tell me about Chief Justice Traynor, your assessment of his time on the court.

MOSK: Traynor was a brilliant jurist and produced excellent opinions. My only criticism of him would be as an administrator of the court, he showed somewhat a lack of interest. He did his job, and that was it. As compared with, let's say, our current chief justice, Ron [Ronald] George, who's a splendid administrator.

LaBERGE: How were the assignments made back then? I'm sure it's changed. Or maybe it hasn't.

MOSK: No, it's pretty much the same. There were preliminary memoranda written and circulated, and that indicates generally the point of view of each member of the court. From those points of view, the chief justice can ascertain who has the greatest interest and represents the majority view of the court, and therefore, he's able to make the assignment in that manner.

LaBERGE: Do you ever ask for the assignment if you're really interested, or. . .

MOSK: I never have. Now, I really can't be sure that some of my colleagues may have done so, but I'm not aware of it.

LaBERGE: Or do you refuse?

MOSK: No, you don't refuse unless you feel you're disqualified for some reason. Let's say it's a lawsuit against a bank and you own stock in that bank, you're going to disqualify yourself.

LaBERGE: Did you have to read, I'm sure, or bone up on the canon of judicial ethics before you became a supreme court justice, so that you would know, Gee, if I get that kind of a case, I should disqualify myself?

MOSK: No, you really know that. And as a matter of fact, for a while after my appointment to the court, I did have to disqualify myself in many criminal cases where as attorney general I had taken the appeal in the first place.

LaBERGE: And in that case, the chief justice appoints someone else?

MOSK: The chief justice will assign someone else, usually a member of the intermediate appellate court, to sit in my place on that particular case.

LaBERGE: Could you go on and describe a little bit more about the process when you're assigned an opinion? Or I guess before that, the oral argument.

MOSK: Yes. At oral argument, there usually is considerable give-and-take between the lawyers arguing the case and members of the court. Almost every member of the court will ask some questions during the session. The questions are usually provocative. They attempt to draw out of the contending attorneys more details about their views, and sometimes the questions indicate the view of the judge who

asks the question. Not always. I prefer to, if I have an opinion brewing within me, I tend to ask questions contrary to that point of view, just to stimulate the attorney's contention that would be helpful to me.

LaBERGE: Sort of play devil's advocate?

MOSK: Exactly.

LaBERGE: And before that, you've had a chance to read the lower court opinion?

MOSK: Yes, I've read the lower court opinion, I've read the briefs of the appellant and the respondent, and occasionally I am prepared with some questions I intend to ask before the session begins.

LaBERGE: And so after oral argument, then what happens?

MOSK: After oral argument, the very same day, the seven of us have a conference. We discuss the cases and reach a tentative conclusion. That is, if there are four who take a particular position, the chief justice will assign one of those four to write the opinion, the majority opinion. That proposed majority opinion will circulate among the other six members of the court. Some of them will offer suggestions helpful to that position; others may prepare a dissent, or a separate concurring opinion.

Then we must complete that process within ninety days. We have to sign an affidavit before we get our paycheck every month that we do not have any cases under submission for longer than ninety days.

LaBERGE: So at one time, how many opinions would you be working on?

MOSK: I'm studying every opinion, of course, but I write roughly forty opinions a year. Now, that includes some dissenting opinions and some separate concurring opinions. But it's almost an opinion a week.

LaBERGE: After you've taken this preliminary vote and then the opinion is written, how often does someone change their mind, or. . .

MOSK: I don't think they ever completely change their mind, but they may change the approach they're taking, or they may add or subtract issues from the prepared draft of an opinion.

LaBERGE: Let's just talk about the Traynor court and what that collegiality was like. Do you remember some of the discussions on opinions? I've got a couple of cases written

down, but you might remember something else. One was Mulkey v. Reitman in 1966, when the court invalidated the anti-fair housing initiative. Or some of the tort cases, because there were lots of tort cases those first years.

MOSK: Yes, there were. Traynor was particularly interested in the tort field. He did write some excellent opinions in that area. He was very scholarly, and he did win, and deserved to win, a national reputation in the tort field. I think prior to his day, the tendency of the judges was to lean toward the defense in tort cases, toward protecting insurance carriers that were insuring defendants being sued. But under Traynor, he was more concerned, I think, with making the plaintiff whole. And as a result, he earned a national reputation for his work in that area.

And usually, Justices Tobriner and Sullivan, and [Raymond E.] Peters when he was on the court, would go along with Traynor's point of view.

LaBERGE: And you also?

MOSK: And I also, for the most part.

[End Tape 3, Side A]

[Begin Tape 3, Side B]

LaBERGE: If Justice Traynor was interested in the tort cases, would that influence which cases you agreed to hear, the court as a whole, do you think, or was it just the circumstances of those years?

MOSK: No doubt he retained for himself those cases in which he felt he was going to make a significant contribution to the law of torts. And I don't think anyone resented that, because we felt that he was truly an expert in that area.

LaBERGE: I read a law review article that Justice Tobriner wrote assessing the ten years on the court between '62 and '72, and he talked about doing a lot of tort cases and strict liability coming in, and then I think he called it status law, is making a decision depending on the defendant's status in society.¹ Did you ever think of it that way?

MOSK: No, I never did.

1. Mathew O. Tobriner, "Retrospect: Ten Years on the California Supreme Court," 20 UCLA Law Review 5 (1972).

LaBERGE: OK. I thought that was very interesting.

Well, I'll just give you some of the names of cases I have written down if you want to comment. One was Elmore v. American Motors [Corporation],¹ and it was unanimous, 1969. And the liability wasn't based on contract, but it was based on the manufacturer's. . .

MOSK: Warranty?

LaBERGE: Yes. And his representing that he was performing this certain function.

MOSK: I will have trouble recalling the details of cases.

LaBERGE: OK. And you see, I have this all this written down. What about bartenders' liability? Do you remember any of those cases? Their liability for serving intoxicated customers.

MOSK: No, but I'm sure they haven't. [Laughter]

LaBERGE: This is one that you wrote, Pike v. Frank G. Hough Company,² talking about design defects?

MOSK: Yes. The design defect case.

LaBERGE: One thing you and I didn't talk about is before you even get to the oral argument, how does the supreme court decide which cases they're going to hear?

MOSK: That's our most difficult task. We get about 6,500 petitions for hearing every year, and we produce about 100 opinions. So in deciding which cases to take, we have a difficult task. We try to take those cases in which perhaps there is a disagreement among the intermediate appellate courts; one, say the court in San Diego, is deciding this issue one way, and the court in Sacramento is deciding the same issue a different way. We feel we have an obligation to determine what the law is so they won't have that disagreement in the future.

Secondly, we'll take a case that we think has been decided wrong by the courts below, and it's a matter not just between two contending litigants but affects society as a whole. There are many times that we look at an opinion of the courts below

1. 70 Cal. 2d 578 (1969).

2. 2 Cal. 3d 465 (1970).

and it just involves a dispute between A and B, it doesn't affect anybody else, doesn't affect society as a whole. We may really think that if we were deciding it, we'd reach a different conclusion, but the issue is unimportant, it's factual, and it doesn't affect anybody else, so reluctantly, we'll leave it alone.

So it's only cases that we think affect a large segment of the populace that we will take it over.

LaBERGE: Do you have the same kind of conferences as you do after oral arguments?

MOSK: Yes, we do. We meet every Wednesday fifty-two weeks out of the year. If Wednesday is a holiday, we'll meet on Tuesday or Thursday. We had a long session this morning, all morning, in which we decided what cases that are pending that we want to take over.

LaBERGE: In the same kind of procedure: you read the opinion and the briefs?

MOSK: We read the opinion, we read the petition for hearing, and any briefs to the contrary. Each of us, I think, has a pretty good idea of how he's going to vote on those pending petitions for hearing.

LaBERGE: What are the discussions like among you? I'm sure this changes as the court changes.

MOSK: Somewhat, but we speak in order of seniority. As the senior member of the court, I must be well prepared, because I have to speak first, and talk about the case, and give my views on whether we ought to take the case over or not. And then it goes down in order of descending seniority, until some of the newer members of the court don't have much to say except "I agree with him," or "I agree with her."

LaBERGE: So do you speak before the chief justice?

MOSK: Yes, he speaks last, as a matter of fact.

LaBERGE: And that's always, even if he were the senior. . . ?

MOSK: That's always.

LaBERGE: So after you agree, yes, you're going to hear this case, then . . .

MOSK: Then it takes four votes out of seven to grant the petition for hearing. Unlike the United States Supreme Court, where it only takes four out of nine. Here it takes a

majority, four out of seven. The chief justice will assign one of those four to write what we call a conference memorandum, which is prepared prior to oral argument.

LaBERGE: So there's the conference memorandum, and there's the calendar memorandum after it?

MOSK: They're the same.

LaBERGE: Do you have any anecdotes about those first years on the court under Roger Traynor, or were there any cases that you remember particularly?

MOSK: Oh, I can remember a couple of cute incidents. I remember, there was Justice Paul Peek on the court at that time, and he had a delightful sense of humor. I remember one case in which an attorney was arguing before the court, and one of the members of the court asked him a serious question. He stopped and paused and said, "Your Honors, it's strange that you should ask me that question, because I was rehearsing my speech at home last night and my wife asked me the very same question, and she suggested this answer." Well, then he went on.

A few minutes later, another difficult question from the bench, and I remember Justice Peek said, "Counsel, what did your wife say about that one?" [Laughter]

There were a few light moments on the bench. Usually the matters are too serious to joke about. But on the other hand, if the joke is not aimed at someone's weakness or personality, it lightens things up. When Justice [Malcolm] Lucas was chief justice, he had a delightful sense of humor. There was a case involving the city of Azusa, which had passed an ordinance prohibiting fortune-telling.¹ Didn't license it, it didn't regulate it, it just was a total prohibition.

Well, obviously, there are some First Amendment problems. After all, every sporting page forecasts how sporting events are going to come out, and some ministers tell us what the hereafter is going to be like. So anyway, a fortune-teller named Fatima Stephens brought a suit to enjoin enforcement of that ordinance. She lost in the courts below, and we granted a hearing. Now, as her lawyer got up to argue, Chief Justice Lucas said, "Counsel, you have us at a disadvantage." The

1. Spiritual Psychic Science Church v. City of Azusa, 39 Cal. 3d 501 (1985).

lawyer said, "Why, Your Honor?" Justice Lucas said, "Well, hasn't your client told you how this case is going to turn out?"

LaBERGE: [Laughter] Oh, that's good. And I'm sure it just diffuses any nervousness.

MOSK: It does. This lawyer was pretty good. I could not have thought of an answer to that, but he said, "No, Your Honor. You must remember, I did not consult my client; she consulted me."

LaBERGE: How did that case turn out?

MOSK: It turned out that she won, seven to nothing. I wrote that opinion. If she committed fraud, or deceived people, she could face some charges of that sort, but she couldn't be prohibited from purportedly forecasting the future.

LaBERGE: When Justice Traynor decided to step down, I can't remember, did he just decide to retire?

MOSK: He just retired at age seventy, I believe. Donald Wright was appointed his successor. I must say, I was very fond of Don Wright. He was a great human being. I wouldn't have guessed it from his background. He was born in Orange County, lived in Pasadena. He was a typical country-club type, and yet it turned out he was a man with a heart.

LaBERGE: You were acting chief justice when. . .

MOSK: Just for the short period.

LaBERGE: So you voted for his confirmation?

MOSK: I voted for his confirmation. He was well qualified, obviously; he had served on the trial court before. But we were very apprehensive. . .

LaBERGE: When you say "we," what do you mean?

MOSK: Well, all of us on the court were somewhat apprehensive, because of his rather limited social background. And I remember, I swore him in as chief justice. We were holding a session in Monterey, in the first courtroom after California became a state. It was recognition of a historical event.

Don Wright took his seat as chief justice, and as I say, we had been somewhat apprehensive until that first case. I'll never forget, it involved an interpretation of a statute. The counsel argued back and forth, and I remember the new chief justice

made the statement in the courtroom, he said, "If the legislature didn't mean what it said, why didn't it say so?" [Laughter] We decided we liked Don right from that point on.

LaBERGE: Something that I read suggested that Justice Louis Burke was possibly going to be appointed, or that was rumored that he might have been appointed chief justice.

MOSK: I don't know. Let's see, it was Governor [Ronald] Reagan, I believe, who made the appointment.

LaBERGE: Yes, 1970.

MOSK: I would have been happy with Lou Burke as chief justice, but it turned out Don Wright was first-rate.

LaBERGE: When at the same time, I think it was the California Journal that I was reading, there was just one blurb, and it didn't mention it again, that you were maybe considering running for [United States] Senate again.

MOSK: Well, there are always political rumors before each election. I suppose I gave fleeting thought to running for something else, but then I decided that would get me back into politics, and that's what I left, so why do it? So I have always decided to stay where I am.

LaBERGE: Well, you must have liked it, because you did keep the same. . . . Under Chief Justice Wright, did the tenor of the court change at all?

MOSK: Not very much, if at all. As I indicated, Don Wright was a very courageous fellow. Though a conservative Republican appointed by a conservative Republican governor, he had the courage to write an opinion, People v. Anderson,¹ which declared the death penalty to be unconstitutional. It was the most courageous opinion I can recall. And to have Don Wright, a conservative Republican, write that opinion, was quite remarkable.

LaBERGE: Do you remember any of the discussions around that?

1. 6 Cal. 3d 628 (1972).

MOSK: No, but a majority of the court backed him up. But of course, the people through initiative took care of that opinion at the first opportunity, and declared specifically that the death penalty is not cruel or unusual punishment.

He relied on the distinction between the United States Constitution Eighth Amendment, which prohibits cruel and unusual punishment, with the California Constitution, which prohibits cruel or unusual punishment. And he placed great significance to that distinction between the "and" and the "or."

LaBERGE: And then later, you wrote an opinion based on the state, cruel or unusual, on the penalty. On whether the penalty was cruel or unusual, because it was I think one year or life.

MOSK: Yes. [Pause]

LaBERGE: Now I've probably made you lose your train of thought, and I've lost mine. Well, then there was the initiative [1978] so that the death penalty is now constitutional.

MOSK: Yes.

LaBERGE: When you have a problem with what you in your conscience believe and what the law is, how do you solve that?

MOSK: That's a difficult problem for anyone with a conscience. You feel that if you were making the law, you would do it in this manner. But on the other hand, I realize that I stood up and I took an oath to support the constitution and the laws as they are, and not as I might prefer them to be. As a result, I have to adhere to the laws as they are.

For example, if I were writing on a clean slate, I would find that the death penalty does violate the "cruel or unusual" clause of the constitution. But on the other hand, the law is the other way, and so I have written probably more opinions upholding death penalty judgments than any other member of this court or of any court in the country.

LaBERGE: During that time, I don't know if you call it the Mosk doctrine, but someone referred to it as the Mosk doctrine, and that is interpreting or basing decisions on the state constitution rather than the federal.

MOSK: Yes.

LaBERGE: Could you talk a little bit about that, and how you developed that?

MOSK: Yes. I do believe that our state constitution should take first precedence. I think I originally got that from some of the meetings we used to have at national organizations. There was a justice on the Oregon Supreme Court named Hans Linde, and he used to contend that in deciding a set of facts, a judge should first look to the statute involved. Second, he should look to the constitution of the state. And only as a last resort, [he should] look to the Constitution of the United States. That always appealed to me, so I adhere to the philosophy of state's rights, and that our state constitution should be the governing body.

And we were able to prevail on a number of issues using our state law primarily. For example, the United States Supreme Court in a case called Swain v. Alabama¹ declared that there could be no limitations whatever on the right of attorneys to peremptorily challenge prospective jurors. As a trial judge, I had seen many cases involving a black defendant, and there would be a white victim, and a white prosecutor, and a white judge. A black man would be put in the jury box, and the prosecutor would immediately challenge him, solely on the basis of his race. I always thought that was terribly wrong, but I couldn't do anything about it, in view of the Swain v. Alabama opinion.

When I was on the supreme court, we had a case called People v. Wheeler,² and I was able to write an opinion saying, "Sorry, we disagree with Swain v. Alabama, and under state law, we hold that you cannot limit peremptory challenges unless they are being used for a racially discriminatory purpose." And we described the procedure the court was to undertake under those circumstances. So the challenging of jurors because of their race, or sex, or ethnicity, was no longer permitted.

1. 380 U.S. 202 (1965).

2. 22 Cal. 3d 258 (1978).

Seven years later, the United States Supreme Court came around to our point of view in a case called Batson v. Kentucky,¹ and they agreed that race could not be the reason for challenging a prospective juror. Taking the lead in an issue of that sort is gratifying.

LaBERGE: How did you have the courage to do that? I mean, not knowing that seven years down the road . . .

MOSK: Well, we relied on state law, the state constitution, that prohibited discrimination. We felt that should take precedence. And a majority of the court agreed with my view on that. We used to say, "With four votes, we can do anything." [Laughter]

LaBERGE: Before you were a member of the state supreme court, had you thought about the states' rights very much, or was it something that kind of developed?

MOSK: I guess it developed, because until I was on the court, I didn't have an opportunity to make state law prevail over conflicting views of federal courts or other states' laws.

LaBERGE: How do you keep up on what the federal laws are, what other states' laws are?

MOSK: We get at least a synopsis of federal opinions regularly.

LaBERGE: When you were talking about meeting with other groups throughout the nation, what kinds of groups?

MOSK: When I was attorney general, there was a very active national association of attorneys general. The fifty of us would meet periodically, usually in very nice resorts in the country. And similarly, on the supreme court, there are constant seminars arranged by various judicial and professional groups. So it's fairly easy to keep up with trends and opinions of other jurisdictions.

LaBERGE: And is there some group that's just other supreme court justices?

MOSK: Yes, there is a national association of supreme court justices. They meet at various places around the country. Then there's still a group of former supreme court justices who have organized. Let's see, they're going to have a meeting this summer up in Mackinac Island, Michigan. That's an association of former attorneys general.

LaBERGE: OK. So you qualify for that one.

1. 476 U.S. 79 (1986).

MOSK: That's right. Frank Kelly is the attorney general in Michigan, and he's retiring this year, and he's hosting that conference.

LaBERGE: I see, so that's why it's there. There's actually a beautiful governor's mansion. . . . I mean, I don't think it still is the governor's mansion, but it was.

What about the ABA [American Bar Association]? Were you active in the ABA?

MOSK: Not particularly. I belong, but that's it.

LaBERGE: How about the case Serrano v. Priest?¹ The educational opportunities being unequal because of the different taxes paid by different cities.

MOSK: I'd have to brush up on that.

LaBERGE: OK. You did not write that opinion. I know we started to talk about this a little bit off tape, the Bakke² opinion.

MOSK: Yes. That opinion has always interested me. As you know, Bakke applied for admission to the medical school at Davis. As I recall, they took in 100 new students each year, but reserved sixteen of the 100 for minorities only. Bakke had better objective qualifications than any of those sixteen who were admitted, but he was rejected because of the fact they were taking in sixteen minorities.

He came to court, and we held three things. One, that Bakke had to be admitted; secondly, the racial quotas were bad; and thirdly, that race should not be deemed a factor at all in college admissions.

That case went up to the United States Supreme Court, and they--a majority--agreed with us on two of the three propositions. They agreed that Bakke had to be admitted, they agreed that quotas were unconscionable, but they did say race could be considered among other factors. Justice [Lewis] Powell wrote that opinion.³ I was satisfied certainly with that result. But I must say--

[End Tape 3, Side B]

1. 5 Cal. 3d 584 (1971).

2. Bakke v. Regents of the University of California, 18 Cal. 3d 34 (1976).

3. 438 U.S. 265 (1978).

[Begin Tape 4, Side A]

LaBERGE: OK, for four years . . .

MOSK: For four years, I was scared to death that Bakke would flunk out of medical school and make our opinion look bad. But he graduated with honors. He won an internship at the Mayo Clinic in Rochester, Minnesota, and as far as I know, he's practicing medicine in Minnesota today. But it gives one a certain satisfaction at helping to create a medical doctor.

But of course, the Bakke opinion is not without controversy. There are those who believe that there should be racial quotas. There are those who think that race should be a factor in determining college admissions. I respect those who have that point of view, but I don't share it.

LaBERGE: From the beginning, how did the vote go among the seven of you, deciding how you were going to decide, and then how did you get assigned that opinion?

MOSK: There wasn't any question but that it was an important enough matter for the court to take over, and I think everyone agreed on that. When it came to deciding the case, Justice Tobriner took a contrary point of view. He favored the racial factor in college admissions. I remember in our discussions, Chief Justice Donald Wright expressed himself. He said that his heart was with Tobriner but his head was with me. So it was, as I recall, a six-to-one opinion.

LaBERGE: And how did you come to that decision? Because I'm sure people would have expected you to vote the other way. Have you been told that?

MOSK: Yes, perhaps so, but I firmly believe that people should be judged solely on merit, objective merit, rather than their race or their color. So it seemed to me that it was improper to reject Bakke in favor of persons who had less objective qualifications merely because of their racial complexion.

LaBERGE: In deciding that, did you realize you were breaking new ground?

MOSK: Yes, we did recognize it was a significant matter of considerable controversy, of course. We wrote the opinion using many federal authorities with the firm expectation that the case would go up to the United States Supreme Court, and if

they said we were wrong, so be it. But we thought it was important enough that there be a national consensus on this, rather than just a California point of view.

LaBERGE: When it went to the U.S. Supreme Court, did you go sit in?

MOSK: No. But we followed it very closely, of course.

LaBERGE: I don't know if you can comment on this, but since then, in the developments in affirmative action and the passage of Prop. 209,¹ have your views stayed the same, or how have you reacted to that? I don't know if that's all right for you to comment on that.

MOSK: Yes. In general, I believe my views are pretty much the same. But I do have a gnawing sympathy for those who were disadvantaged because of race or color or economics, so that they cannot compete on a basis of equality with others. I've always seen the long-range solution to be roughly this: that those who have a disadvantage of any kind, whether it's race or economics or physical, ought to be given some special treatment during their early days of education in the public schools, so that when the competition begins later on for college admission, for professional school admission, or for employment, that they will be able to compete on a basis of equality. But I concede that it's going to take some special training for many of those people in the early days of public schools, and I don't think we're doing that today.

LaBERGE: How are we doing time-wise, and are you tired?

MOSK: No. Want to go about ten minutes more?

LaBERGE: Sure.

[Discussion deleted]

LaBERGE: Anything more on Bakke? Are there any anecdotes?

MOSK: No. Of course, I never met [Allan] Bakke; I don't meet litigants. But at a dinner on my twenty-fifth year anniversary as a member of the court, he did send a telegram from Minnesota commending me.

1. Proposition 209 (November 1996).

LaBERGE: He probably follows you just the way you follow him. [Laughter] Some other issues that came up during Chief Justice Wright's time as chief justice. One was lawyer advertising. Now it seems like, Oh, that's such an old issue, but at the time, it was so new.

MOSK: Yes, that was a difficult issue.

LaBERGE: One of your decisions, was it Jacoby v. State Bar?¹ I think that was just like the beginning, the tip of the iceberg.

MOSK: Yes. I'm not sure that we were right, but I think the general view of the court has been that advertising is a First Amendment right, free speech right, and that it can't be denied to lawyers any more than it can be denied to any other citizens. Having said that, however, I think it has demeaned the profession a good deal. I saw an ad the other day in the San Francisco Chronicle of a lawyer calling himself a shark, and he had a picture of a shark in his ad. Well, that, I think, cheapens lawyering as a profession. And yet, it's one's First Amendment right to speak ill of himself if he chooses to do so.

LaBERGE: Then the same thing with other professions too.

MOSK: Yes.

LaBERGE: Because I remember when all of that was taboo. Doctors and dentists.

Now, I have written down that you were at one time, 1973, chairman of the National Center for State Courts, when there was a review of the state appellate court system. Do you remember doing any of that kind of administrative . . . ?

MOSK: I guess I did my share of it, but I really don't like it.

LaBERGE: Everyone sort of has to do their share, is that the idea?

MOSK: That's the idea. But I'm not big on administrative matters.

LaBERGE: What about Chief Justice Wright? How was he as an administrator?

MOSK: He was very good. He got along with everyone. If I'd call his office and say, "I'd like to see the chief for a few minutes." Within a few minutes, he'd be down in my office saying, "What's on your mind?" He was just a delight to work with.

1. 19 Cal. 3d 359 (1977).

- LaBERGE: How does that work in between your regular conferences when you all meet? What's the collegiality like? Do you call each other and wander on down?
- MOSK: It depends on the chief justice. That was true of Wright, and it's currently true of Chief Justice Ron George. I must say when Rose Bird was the chief justice, though she was a very intelligent woman, but as administrator, I have to say she was somewhat of a disaster. I'd have to have an appointment to see her to discuss a case or a problem. Her door was always locked.
- LaBERGE: Not just closed, but locked?
- MOSK: Closed and locked. And I don't think she liked the administrative aspects of being chief justice. I wouldn't have liked it, frankly. I want to do my work, and I really don't want to be prescribing rules for the court and that sort of thing.
- LaBERGE: And what about [Chief Justice] Malcolm Lucas?
- MOSK: He's a very charming man, and was a good chief justice, let's say as distinguished from a great chief justice.
- LaBERGE: OK. Another case, and it was after the ALRB [Agricultural Labor Relations Board] was established, that you wrote the opinion upholding access for union organizers on the growers' property.¹
- MOSK: Yes, I vaguely remember the case, without remembering details, but it involved the ability of organized labor to organize, and to have access to potential members of the organization. In effect, we said yes, they could have such access.
- LaBERGE: Because there was another case that was decided otherwise, except you dissented. I don't have it at my fingertips, but it was a private shopping center, and whether initiative backers could obtain signatures.
- MOSK: Yes. No, I wrote the majority opinion there. It was a question of whether persons could go on a privately-owned shopping center to obtain signatures on petitions. Our court held yes, they could. But interestingly enough, the United States Supreme Court in a case coming out of Oregon held that the property owners had a right to exclude those who were there for purposes other than to shop. In other

1. ALRB v. Superior Court, 16 Cal. 3d 392 (1976).

words, they approved the owners' philosophy, which was "shut up and shop."

[Laughter]

We held in another case later on, after the Oregon case went the other way, we held nevertheless that the petition seekers had a right to go on private property shopping center, so long as they weren't interfering with the shopping, and I must say that the United States Supreme Court took over that case from us, and we were apprehensive that that was the end of our point of view. Amazingly, they held, with Chief Justice [William] Rehnquist writing the opinion, in a nine-to-nothing opinion, that OK, if states want to have different provisions than we've ordered in the Oregon case, so be it, that's their right. They upheld our opinion.

LaBERGE: Do you remember the name of that case, by any chance?

MOSK: Justice Frank Newman wrote the second opinion, I know.

LaBERGE: Oh, is it Pruneyard?¹

MOSK: Yes, it's Pruneyard. Pruneyard was the case. That was the second one.

LaBERGE: OK. I didn't realize he'd written it. OK, this is another important case of yours: Friends of Mammoth?² And the first interpretation of the [California] Environmental Quality Act. Do you remember that?

MOSK: I remember that we upheld the act. Apparently, it's been received with some enthusiasm.

LaBERGE: Yes, by environmentalists.

MOSK: By environmentalists. As a matter of fact, they recently held a conference in Yosemite and invited me to come down and receive their applause, but I wasn't able to make it.

LaBERGE: On all of these, the cases just run the gamut of subjects. Is that difficult for you to . . .?

MOSK: Well, I guess as a member of the court, we're expected to be experts on absolutely everything.

1. Pruneyard Shopping Center v. Robins, 23 Cal. 3d 899 (1979); affirmed 447 U.S. 74 (1980).

2. Friends of Mammoth v. Board of Supervisors, 8 Cal. 3d 247 (1972).

LaBERGE: Is that a good place to stop? Next time we can start with the Rose Bird court.

MOSK: OK.

LaBERGE: Unless we have forgotten something that you think of.

MOSK: Oh, I'm sure we have. If we've forgotten it, I can't think of it.

[End of Session]

[Session 3, April 2, 1998]

[Begin Tape 5, Side A]

LaBERGE: We ended with when Chief Justice Donald Wright stepped down. We had talked a little bit about the independent state grounds theory. Since that time, I've talked to a couple of law professors, simply because this is going to be used for research, so I wanted to see what questions they had. One was, did you have relationships with other justices throughout the country where you would discuss theories like this that would help you develop that kind of a theory?

MOSK: Yes, there were a number of justices, and a few college professors, who were advocates of a states' rights theory, that is, the right of state courts to interpret their own constitutions. We did meet irregularly at national conferences and discuss the issue. I have in mind one particular justice who was a leader in that thought movement, and that was Justice Hans Linde of the Supreme Court of Oregon.

LaBERGE: Had he ruled on this before you did, or concurrently?

MOSK: Yes, he was way ahead of the pack. I think he had a good influence on many other justices.

LaBERGE: Other justices on the California Supreme Court, or. . . ?

MOSK: Well, on supreme courts generally. There were several supreme courts that seemed to take the lead in this movement. New Jersey, for example. Massachusetts. Oregon, and to some extent Washington, and California.

LaBERGE: So how carefully do you watch what other courts are doing?

MOSK: I watch that irregularly, but I like to be aware of what the trends were in other parts of the country, and to see how they could be adapted to what we were doing in particular cases in California.

LaBERGE: What about [United States Supreme Court] Justice William Brennan?

MOSK: Yes, Brennan, of course, was strongly in favor of states interpreting their own constitutions, even when they might be in conflict with a decision of the United States Supreme Court. There was one case that went up to the U.S. Supreme Court. It involved distribution of handbills and circulation of petitions on a privately-owned shopping center. In a case called Diamond v. Bland,¹ we held that in the conflict between the free speech and free circulation rights of citizens, and the right of a property owner to exclude persons who were not on his premises for shopping purposes, we held in that conflict the rights of those seeking signatures on petitions would prevail, provided, of course, they were not disturbing the shopping that was going on in the shopping center.

After we held for the petition circulators in that case, there was a petition or certiorari to the United States Supreme Court, and they denied it. So we felt that our interpretation of that constitutional conflict was correct. But lo and behold, at the next session of the U.S. Supreme Court, a case came out of Oregon entitled Lyod v. Tanner, but there they held to the contrary, that the property owner had a right to exclude persons who were not there for business purposes. In other words, the owners' slogan was, "Shut up and shop."

LaBERGE: So they granted certiorari, and they actually ruled on it?

MOSK: No, they did not grant cert in the California case.

LaBERGE: Not the California case, but in the Oregon case?

MOSK: In the Oregon case. A few years passed, and we had another case involving precisely the same issue. We held in that case that once again, the rights of the circulators of petitions and their free speech rights prevailed over the business rights of the shopping center owner.

That case went up to the Supreme Court, and lo and behold, in a nine-to-nothing opinion written by Chief Justice Rehnquist, he held, well, if a state wants to act this way, it has a perfect right to do so under its own constitution. So we felt that was a complete vindication of the exercise of states' rights.

1. 11 Cal. 3d 331 (1974).

LaBERGE: Do you think you had anything to do with changing the minds of others on your court in that direction?

MOSK: No, I don't think so. They acted independently. As I recall, there were a couple of dissenters on that issue. Justice [Frank] Richardson frequently dissented on the issue, and I think Justice Bill Clark did as well. But the others all generally agreed with that proposition.

LaBERGE: When it comes down to an issue that is in both the state constitution and the federal Constitution, how do you decide?

MOSK: Justice Hans Linde always had a theory that you decided a case by looking first at the state law, second at the state constitution, and only third and lastly, if necessary, the U.S. Constitution. But if he could decide it on the first two issues, he would do so.

I have in mind the use of peremptory challenges to prospective jurors.

LaBERGE: And I have that written down: People v. Wheeler?¹

MOSK: Yes. The United States Supreme Court had decided some years back in a case called Swain v. Alabama that there could be no restrictions whatever on the right of an attorney to exercise peremptory challenges to prospective jurors. I had been a trial court [lawyer] for many years and tried many criminal cases, and on occasions there would be a case with a black defendant and a white prosecutor, and white witnesses, and white victims, and then whenever a black person would be put in the jury box, the prosecutor would immediately challenge that black juror on just a peremptory challenge. And it always occurred to me that this black defendant would not feel that he was getting a fair trial when persons of his race were excluded from the fact-finding process, but I couldn't do anything about it because of the Swain v. Alabama case.

When I got on the supreme court, we had a case called Wheeler, and there we had an opportunity to hold that there could not be restrictions on peremptory challenges provided they were not being used for a racially discriminatory purpose.

1. 22 C. 3d 258 (1978).

And we outlined the procedure to be followed by a trial court in determining whether the challenge was for a racially discriminatory purpose. And in the Wheeler case, we very specifically said that we were not going to follow Swain v. Alabama. We were rather brutally frank about that.

Passage of time, I think it was five or seven years thereafter, the United States Supreme Court came around to our point of view in a case called Batson v. Kentucky, and they distinctly held that you couldn't exercise challenges, peremptory or any other kind, for a racially discriminatory purpose.

So that's an example of how state law can take a lead in protecting individual rights.

LaBERGE: Any recent cases like that?

MOSK: No, and there are not likely to be very many, in view of the fact that the people in their wisdom passed an amendment to the state constitution which declares that the state constitution is to be interpreted in accord with the federal constitution.

LaBERGE: Are you saying that tongue in cheek? [Laughter]

MOSK: I'm saying that I think that was an unfortunate amendment.

LaBERGE: Because we're on that topic, this must have been passed through initiative?

MOSK: Yes.

LaBERGE: I'd like to hear your views on the initiative process.

MOSK: Well, now, I said that too fast. It may have been passed by the legislature and placed on the ballot by the legislature. But it was voted on by the people.

LaBERGE: And I'm embarrassed to say that I forgot that I voted on that. I know that you have various views on the initiative process.

MOSK: Yes. The initiative was a great theory when [Governor] Hiram Johnson put it forth many years ago. The idea of letting the people legislate is excellent in theory. But I'm not sure that it is working well in a state the size of California. After all, we're the most populous state in the nation, and therefore, it takes tremendous resources to qualify an initiative measure and then to persuade the people to vote for it after it has qualified. And so today, most initiatives, at least of controversial nature, are

proposed by persons and/or organizations and/or economic interests by those who have tremendous resources.

And too, I find that it's not uncommon for an initiative measure to have a simple error in it that was not discovered. After all, in the legislative process, a matter goes before a legislative committee in the assembly, and if it's passed it goes on the floor of the assembly where it's debated, and if passed it goes to a committee in the senate where it's debated, and then it goes on the floor of the senate where it's debated, and then it goes to the governor who has a veto power. Now, in that lengthy process, any bugs or flaws or inconsistencies or unconstitutional aspects are discovered.

Whereas, you and I can sit down at a typewriter this afternoon and peck out an initiative measure, and give it a seductive title like "For lower taxes and better government," and we'll get all the signatures we need, and we can get it on the ballot. It may have some serious flaws in it.

There was a case a few years ago, and I can't possibly remember the name, where we had to interpret "and" to really mean "or" in order to make an initiative measure valid.

LaBERGE: Was it the Victims' Bill of Rights?¹ I remember reading about that.

MOSK: I have no recollection of . . .

We had to interpret "and" to mean "or." Now, that kind of an error would have been discovered in the legislative process in all those committee hearings and floor debates. But whoever drafted that measure did it without necessarily consulting anyone else.

So in short, I think legislative proposals are more likely to be practical and workable, and valid constitutionally, than are initiative measures.

LaBERGE: How much time would you say you have spent having to decide on the constitutionality of an initiative?

MOSK: After every election, when a dozen or more initiatives are passed, there are bound to be some challenges to them. I can't describe them in terms of percentages.

1. Proposition 8 (June 1982). See also Justice Mosk's concurring opinion in People v. Skinner interpreting Proposition 8.

LaBERGE: I know Proposition 13 was one in 1978.

MOSK: Yes.

LaBERGE: Shall we turn to the Rose Bird court? What was your reaction when she was appointed both to the court and chief justice?

MOSK: Rose Bird is a very bright, intelligent, competent woman, but that does not necessarily equip her to be administrative and legal head of the entire judiciary of California. So there were problems. I remember, I don't know whether I ought to tell this or not, but one of the first days that . . .

LaBERGE: You could look at it later.

MOSK: OK. One of the first days that she was on the court, I was in talking with her, and I remember vividly what I said. I said, "I certainly cannot blame you for being here, but I blame [Governor Edmund G., Jr.] Jerry Brown for putting you here." She never let me forget that statement. [Laughter]

I'm afraid it was inevitable that there would be administrative problems, and as a result of those, public controversies during her administration. She would have made a fine judge or justice on any court, and it was a pity that the governor didn't evaluate her capabilities more carefully.

LaBERGE: Did you talk to the governor about this, or did he ever consult you?

MOSK: No, he never did. I heard indirectly, I think from a good state senator who was a friend of mine, that the governor said that. . . . Oh, the state senator spoke to the governor and suggested that I might be an appropriate chief justice, and he was quoted as saying, "I could never appoint Justice Mosk because of the Bakke case."

LaBERGE: Oh. I was reading Justice [Allen] Broussard's oral history this week, and he was commenting on his confirmation procedure, and George Deukmejian before he was governor asking questions like, "Are you going to be a judicial activist?" And just that idea that you and I talked about before, of how do you appoint a justice? Do you appoint on philosophy, or how do you confirm someone, or how do the electors vote? That's very interesting.

Well, when Justice Bird took her position, what were the visible changes on the court, or the way it was administered?

- MOSK: She was somewhat aloof from her colleagues. We generally had to have an appointment to see her to discuss a pending case or matter. Whereas in previous and subsequent administrations, members of the court can just wander in and out of each other's offices. I never close my door to my office, and I don't have to have an appointment to see my colleagues to talk about a matter. So she had this administrative problem that made it difficult for smooth operation of the court.
- LaBERGE: And what about your staffs? Are the staffs segregated in the sense that you have your staff or does everybody kind of work together?
- MOSK: No, each of us has a staff of his or her own lawyers. We each have five who belong to me and work with me. But there again, they do mix around with others and talk about mutual problems, and sometimes try to persuade the staff of another justice of a position that they're assuming. I think I am fortunate in having what I think is the best staff of the court. My senior staff member has been with me all thirty-three years I've been on the court.
- LaBERGE: This is Peter?
- MOSK: Peter Belton. Unfortunately, he's a paraplegic, or else he'd be out making a fortune in private practice.
- LaBERGE: When Rose Bird became chief justice, was there a change in the way the staffs interacted, do you think?
- MOSK: Probably so, but I don't know that I can describe it.
- LaBERGE: I know that the administrator for the courts left, Ralph Kleps. And that that was unusual.
- MOSK: Yes, he had been with the court for many years, and I think was generally considered the best court administrator in the country.
- LaBERGE: How much dealings do you have with the court administrator? Or is it mainly the chief justice?
- MOSK: Yes, it's mainly the chief justice, but on the other hand, if I needed a new chair or a new desk, some blinds to keep the sun out of the office, I would call the court administrator and he would take care of it.
- LaBERGE: But for the most part, it doesn't really impact you who the person is?

MOSK: That's right.

LaBERGE: At the same time that Rose Bird was appointed, Wiley Manuel also, and Frank Newman? Or just a little bit later?

MOSK: I don't recall the order in which they were appointed, but they were two splendid members of the court. Wiley Manuel was outstanding, I think. Frank Newman was a very bright man, but his interests were primarily international, and I think he never did fully adapt to a state court. He liked running over to Geneva or to The Hague for some international conference, and he no longer could do that.

LaBERGE: You once said that you didn't really like administration. But do you think you would have liked being the chief justice?

MOSK: I don't think I would have liked it, because of the requirement that you be effective as an administrator. I had to do a certain amount of that when I was attorney general, and frankly, I don't think I'm really equipped to decide who can work with whom, and if they don't get along, how to adjust that. So I was really happy that I no longer had to do that when I left the attorney general's office and became an associate justice.

LaBERGE: Well, during that time, there were a lot of death penalty cases, and then the 1978 election and the Los Angeles Times article¹ after that, and then the hearings.² I've read a little bit, but I would like to hear what your take on all of that is. I guess first of all with the Tanner³ decision.

MOSK: Rose Bird was pilloried because she generally voted to find some defect in death penalty convictions and to reverse them. I probably don't like the death penalty any more than she does. As a matter of fact, I think the death penalty is wrong, that a person has no right to kill, and the state has no right to kill. But the difference is

1. "Supreme Court Decision to Reverse Gun Law Reported," Los Angeles Times, 7 November 1978.

2. In the Matter of Commission Proceedings Concerning the Seven Justices of the Supreme Court of California, C.J.P. No. 3012 (1979).

3. People v. Tanner, 24 Cal. 3d 514 (1979).

that I took an oath to support the law as it is and not as I might prefer it to be, and therefore, I've written my share of opinions upholding capital judgments.

But that became an issue in . . .

LaBERGE: Was one of the reasons it was an issue because of the death penalty initiative, and it being fuzzy, or the fact that it hadn't been tested?

MOSK: Well, it's inevitable that death penalty judgments would be an issue. Tremendous resources go into the trial of a capital case, and then a . . .

[End Tape 5, Side A]

[Begin Tape 5, Side B]

LaBERGE: You were saying that tremendous resources and time and effort go into a capital case.

MOSK: So that if the case is reversed, inevitably there will be great disappointment among prosecutors and the public. So that it was inevitable that would become an issue in the retention campaigns of Rose Bird and others.

LaBERGE: Can we talk a little bit about the Commission on Judicial Performance investigation after the 1978 elections? I know that Rose Bird asked for it and didn't ask the rest of you whether you also agreed with that. How did you feel about that?

MOSK: Yes, that's true, but I really don't recall what the issues were or how . . .

LaBERGE: Well, it was after the Los Angeles Times article came out on election day, accusing the court of holding back one of the decisions until the election was over, because Rose Bird was up for confirmation.

MOSK: Yes.

LaBERGE: And so the question was, was there any impropriety? She asked for an investigation of the court so that the court's name could be cleared. And you were all asked to testify in public.

MOSK: A couple of my colleagues testified in public, and I insisted that the proceedings had to be private. I indicated I would not testify unless I did so in private. That

case went all the way up to the supreme court.¹ And my son represented me. Every supreme court justice, of course, disqualified himself, so that it was a supreme court consisting of seven court of appeal justices who heard the case, and they unanimously agreed with me. So the proceedings did become private. Once they were private, they seemed to come to a quick end.

LaBERGE: And it was found there was no impropriety in the court's actions?

MOSK: That's correct.

LaBERGE: In one of those cases, and particularly the Tanner case, it came up for a rehearing and you changed your vote. Do you recall that, or why you changed your vote?

MOSK: I recall the vote, but I frankly don't recall the rationale at the moment.

LaBERGE: It had to do with the trial judge's discretion whether to grant probation or not.

MOSK: I really can't discuss that without reviewing it.

LaBERGE: Do you remember another case that you're famous for, Hawkins v. Superior Court,² requiring the use of preliminary hearings after a grand jury indictment?

MOSK: I remember the case, and I ruled, but I don't remember any details.

LaBERGE: Well, tell me about your son representing you. How did you decide to ask your son to represent you?

MOSK: Well, he volunteered to do it. He's a good lawyer and a member of a substantial law firm in Los Angeles, and he was willing to undertake the cause. He since has gone on to a substantial career. He's a judge in the Iran-United States Claims Tribunal which sits over in Holland. He's also chairman of the board that rates motion pictures. And he's a member of a substantial law firm at the same time. So in short, I had good representation.

LaBERGE: Have you read any of the books that were written about the court, like Preble Stoltz?³

1. Mosk v. Superior Court, 25 C. 3d 474 (1979).

2. 22 C. 3d 584 (1978).

3. Preble Stolz, Judging Judges (New York: The Free Press, 1981).

MOSK: Yes, I know Preble Stoltz very well from my days as attorney general. I thought he did a commendable job.

LaBERGE: Because one of the things he says in there is that after this investigation of the court that. . . . Or that it was a sad day for the court, that the court lost some of its, not respectability, but . . .

MOSK: Luster.

LaBERGE: I guess so. And I just wondered how you felt about that, if you thought the same.

MOSK: Yes, to some extent I think that's accurate. For the court to be embroiled in a controversy publicly was unfortunate. We do have our conflicts of course, and disagreements, but they're all among ourselves and they don't see the light of day, fortunately.

LaBERGE: Another person who wrote is Joseph Grodin, wrote an autobiography after he was off the court. Did you read that one?¹

MOSK: Yes, I read his book. I thought it was a good book.

LaBERGE: That comes to the other election, and that's the 1986 election, when Rose Bird, Joseph Grodin, and Cruz Reynoso were not elected to another term, but you were. What's your opinion of those retention elections? Are they too political?

MOSK: They may be political on occasion, and to a large extent they were that year, in '86. But I think our system is a pretty good one. It's sort of a compromise between the system of choosing and retaining and electing judges in states like Illinois, where they run with party labels, named opponents, and for reasonably short terms. I think that's an unfortunate method. And the other, to the contrary, is the federal system, where judges are appointed for life, never have to answer to the public.

Well, I think our system, where we have reasonably long terms, twelve-year terms, and where we don't have a political designation opposite the name, you don't know whether the judge is a Republican or a Democrat, and where we don't have a named opponent, it's just a yes or no vote. That gives the public a chance to reject a judge who may have become senile, or an alcoholic, or have some other serious

1. Joseph R. Grodin, In Pursuit of Justice. Reflections of a State Supreme Court Justice (Berkeley: University of California Press, 1989).

disability, and yet, he doesn't have to appeal to political partisanship. So I think our compromise between the two possible methods is a pretty good one.

LaBERGE: You didn't get involved in a campaign at all that year, and you weren't targeted.

Why not, do you think ? Because you had voted somewhat like the rest of them, if that was the reason they weren't kept.

MOSK: Yes, an analysis of my record would not be greatly disparate from those other three. But to be somewhat immodest, I might suggest that I used a little political acumen in that first of all, I didn't announce that I would seek retention until the very last possible day, and by then, the campaigns against the other three had already been pretty well organized, so that I was not then included.

In addition, I made a public announcement that I would not seek nor accept any campaign contributions, that my only expenditure would be twenty-six cents to purchase a stamp to mail my petition to Sacramento. That got me more attention in the press than if I had hired a P.R. man to work for me. Those two rather simple events, I think, distinguished me somewhat from the others who were busy raising campaign funds and out campaigning.

LaBERGE: Either of those happenings, the fact that they were not retained, or the commission's investigation of the court, what kind of a reaction and effect do you think it had on the way you worked together?

MOSK: I don't think it had any effect on the way we worked together. Certainly Joe Grodin and Cruz Reynoso and other members of the court, including myself, were always compatible. We worked together, produced our work in cooperation.

LaBERGE: And the same thing in '79, after the Commission on Judicial Performance took testimony from all of you, and I know there were disagreements in the testimony. Or people's feelings could have been hurt by what was said. I just wondered how you were able then to, even during that time, meet and . . .

MOSK: You mean before the new appointees were . . . ?

LaBERGE: Yes.

MOSK: I don't recall any serious problems.

LaBERGE: You were able to leave things at the door when you come in.

MOSK: Yes. I think we were all very fond of Joe Grodin and Cruz Reynoso, and Cruz is a delightful person on a personal basis. I don't think he bears animosity toward any human being.

LaBERGE: I'm hoping that we'll get to interview him too.

Well, I read a little piece where Bernard Witkin called the Jerry Brown court, "the highest point of judicial activism." Would you agree with that?

MOSK: No, I don't really understand the use of the term "activism." I know it's employed today in connection with federal appointments by President [William J.] Clinton. I think a judge is either competent or incompetent professionally, and I don't think it's possible to determine when a judge is an activist and when he isn't.

LaBERGE: You just decide the cases on the individual basis.

MOSK: That's right.

LaBERGE: Were you surprised that the three were not confirmed?

MOSK: Yes, I was. I didn't think the rejection campaign would prevail.

LaBERGE: A couple of cases that occurred during that time. One was Sindell v. Abbott Labs.¹ It had to do with DES and market share liability. Do you recall that one?

MOSK: Yes, indeed, I do. That was the first case in the country, I believe, that established a market share liability. It was an interesting factual situation. These women plaintiffs were ill because of something their mothers had taken in the way of a pharmaceutical product. Now, they couldn't establish precisely which company manufactured the product that was taken, the DES. But if they could establish that all the companies involved manufactured the identical product the very same way, then we said each one could be responsible for its market share. If they produced 5 percent of the DES that was sold in California at that time, then they should be liable for 5 percent of the damages.

Now, interestingly enough, I got the idea for the market share theory from a law review article written in the Fordham Law Review by a law student.

LaBERGE: And how did it even come to your attention?

1. Sindell v. Abbott Laboratories, 26 C. 3d 588 (1980).

- MOSK: Good research. [Laughter]
- LaBERGE: Good answer. So do you recall more about the law review?
- MOSK: No, but the law review article had suggested the market share theory of liability, and I thought it made sense. I was able to persuade a majority of the court, although I didn't get everybody, and Sindell was an opinion that I am rather pleased with.
- LaBERGE: Later, I guess eight years later, there was another DES case, Brown v. Superior Court.¹ Do you remember that one?
- MOSK: I don't. I think within the last few years, a couple of other states have adopted that market share liability theory. I forgot whether it was New Jersey or New York in particular.
- LaBERGE: Now, when an opinion like that comes out, and it's something new, do you get reactions from other people across the nation?
- MOSK: Not particularly. I don't personally. The court gets editorial comment, and some praise and some criticism.
- LaBERGE: But say, for instance, you mentioned Hans Linde. He wouldn't call you up and say, "Hey, how did you come to that?" or you'd have a conversation about it?
- MOSK: No.
- LaBERGE: In other cases, are there law review articles or just conversations with other people that affect you and how you're going to decide?
- MOSK: No, not isolated conversations, but something in print may have an influence on one.
- LaBERGE: Can you think of any examples?
- MOSK: Not offhand.
- LaBERGE: And what about lawyers' oral arguments? Are some more persuasive that they could make you look at an issue in a different way?
- MOSK: In a small percentage of the cases, yes. Generally, members of the court have their minds fairly well made up prior to oral argument. They may be persuaded to make some minor changes, to add or eliminate a particular point of view or aspect of the

1. 44 C. 3d 1049 (1988).

case, but it would be a small percentage of the cases where the members of the court have their minds completely changed by the oral argument. Now, that doesn't mean we should not have oral argument. I think it's very important, particularly for the clients to know that their attorney is having an opportunity to present their point of view in public and to a tribunal. But its effectiveness is definitely limited.

LaBERGE: And you don't think you're alone in thinking that?

MOSK: No.

LaBERGE: I mentioned Proposition 13. There was a case brought after that, Amador Valley,¹ on whether that initiative was constitutional. We didn't talk about that, whether an initiative has more than one subject.

MOSK: That's a concept that's generally ignored, sad to say. The theory of the initiative was that a single subject would be prepared and presented to the voters. Unfortunately, those who draft initiatives have a tendency to put in several aspects, as many as they think they can get away with. That makes it difficult for a voter who wants to intelligently analyze the proposition. He may be for three-fourths of it but find one-fourth of it objectionable. Under those circumstances, does he vote yes or no? It's difficult for him to decide.

So I think the one-subject rule is very important to maintain.

LaBERGE: When we were talking about the death penalty and reviewing those cases, which you're always doing, what are the errors that can come up during review?

MOSK: That's a difficult matter to analyze. It's inevitable that in a long trial, and death penalty cases do take a long time to try, that there will be mistakes made, by the prosecutor, or by incompetence of defense counsel, or by the judge. The question we have to answer on appeal is, Did that mistake or those mistakes affect the result? Generally, we will find that an error made was harmless, in that it really didn't affect the result. In other words, the defendant would have been convicted anyway if the mistake had not been made.

1. Amador Valley Joint Union High School District et al. v. State Board of Equalization et al., 22 C. 3d 208 (1978).

So the tendency of the court is to affirm death penalty judgments, indeed all criminal judgments, despite some errors that were made in the trial, if they were not crucial, and if we can find that the errors were harmless overall.

LaBERGE: Was there a change when Malcolm Lucas became chief justice and the composition of the court changed?

MOSK: Yes. Yes, there was a significant change, and statistics bear that out, from the Rose Bird days, when many death penalty judgments were reversed, and the Lucas court, in which death penalty judgments were affirmed. I don't have statistics at hand, but I believe about 90 percent or more have been affirmed. And that's been true ever since.

LaBERGE: What is your opinion of depublication of the court of appeal cases?

MOSK: I believe it's necessary to have that right. A matter may be heard by the court of appeal and a decision prepared. When it comes up to us on a petition for hearing, we may find that there is some illogical point made in the opinion, that it may mislead others in the future, but the bottom-line result is correct. Theoretically, we could take the case over, and that means having oral argument, writing an opinion, circulating it, so forth, to reach the same bottom-line result that the court of appeal reached, but without the errors in its rationale. So it seems to be useful from a practical point of view to leave the result of the court of appeal opinion, but just write the opinion off the books, so that the mistakes or the errors in it can't be cited in the future. But I think it's a necessary right. But I can understand a court of appeal justice who put his heart and soul into writing an opinion, and then has it just wiped off the books. He's not happy about it, and I can understand that.

LaBERGE: Do other states do it the same way?

MOSK: I don't think so. I think we're rather unique in that.

[End Tape 5, Side B]

[End of Session]

[Session 4, May 27, 1998]

[Begin Tape 6, Side A]

MOSK: Well, it's good to see you again. Thanks for coming over and coming up to my chambers.

LaBERGE: My pleasure. I thought we would start with one of the cases that Olga Murray mentioned. On the video at the Alumnae Resources luncheon,¹ there were three cases that she mentioned, and we've talked about two of them. One was Bakke, and one was Sindell v. Abbott Laboratories. But the one we haven't covered is City of Berkeley v. Superior Court.²

MOSK: That involved a matter of conservation of water and access to water by citizens. I don't recall the details of it at the moment, but it did set a pattern for other cases involving communities on the ocean or other bodies of water.

LaBERGE: And I think the public access maybe . . .

MOSK: Yes, it insisted upon public access to bodies of water.

LaBERGE: I have lists of court cases, but then there are just subject matters, so I thought we'd just go with subject matters. And one is hypnosis. I know that you wrote at least one opinion about the effects of hypnosis, or whether testimony was allowed that had been taken under hypnosis.

1. Olga Murray, retired from Justice Mosk's staff of attorneys at the California Supreme Court, won the Women of Achievement, Vision, and Excellence Award at the Alumnae Resources luncheon on May 21, 1998.

2. 26 Cal. 3d 515 (1980).

MOSK: Yes, I'm not enthused about testimony that is obtained through hypnosis. It's artificial, and though there may be scientific bases for indicating the validity of such testimony, I remain doubtful.

LaBERGE: And so you would rule that way?

MOSK: I would rule it out, I think, as a whole.

LaBERGE: What is your opinion about electronic media in the courts, whether it's cameras. . . . once you voted, I think, in the minority against having a camera in the courtroom. Or videos.

MOSK: Yes, that's a difficult problem, in that one feels like encouraging scientific developments of various kinds, whether it's in the field of photography or in taking down conversations as we are doing right now. But on the other hand, what I fear most is that having cameras in a courtroom will make actors out of witnesses, and out of lawyers who are appearing. I think it's inevitable that when a witness knows that he or she is being photographed, he or she will become extraordinarily careful in presentation, and perhaps even do a little bit of acting for the future.

So I would much prefer the proceedings to be conducted in a normal manner without cameras and other scientific devices.

LaBERGE: Are there cameras now when you hear oral argument?

MOSK: Sometimes yes and sometimes no. It depends upon a vote of the seven members of the court. I rather consistently vote no, but I've been outvoted by my colleagues from time to time.

LaBERGE: Does it have an effect on you and whether you ask questions or not?

MOSK: No, not really. I avoid becoming an actor for the camera. [Laughter]

LaBERGE: When we stopped the last time, we had sort of finished talking about the Rose Bird court, and so I thought we'd move on to the Malcolm Lucas court. One subject of several cases was the insurance industry, and one was, I don't know if you'll remember the name, Moradi Shalal v. Fireman's Fund [Insurance Co.]¹ that overruled one of your previous rulings, that injured third parties could no longer sue

1. 46 Cal. 3d 287 (1988).

the tortfeasor's insurance company for bad faith dealings, and it overruled Royal Globe Insurance [v. Superior Court].¹

MOSK: Yes. Well, whether that's progress or retrogression I suppose depends upon one's point of view. I think it was unfortunate that Royal Globe was not continued as the law of California, but I recognize that is a point of view and I respect my colleagues who may have disagreed with me.

LaBERGE: In other insurance cases, were you usually in the minority?

MOSK: I remember Chief Justice Roger Traynor used to say, "The purpose of insurance is to insure." And I always took that seriously.

LaBERGE: In general, not just during that time but for many years, fifteen years, you have been the only. . . . You've been a lonely dissenter, maybe after Justice Broussard left the court. How do you feel about that?

MOSK: Of course, I'm in favor of diversity on any tribunal, and particularly on a supreme court that helps make the law for the state of California. And so I think it's significant that one have an opportunity to express his point of view on what the law is or ought to be. Unfortunately, that matter of diversity seems to at this moment depend upon me. The other six members of the court all were appointed by Governors Deukmejian and Wilson, and quite naturally, and I don't criticize this at all, but quite understandably, they represent a point of view that is consistent with that of the governors who appointed them. I am, as the seventh member of the court, the only one who does not generally represent that point of view.

LaBERGE: One article I read, maybe a couple of years ago in California Lawyer, suggested that you and Justice [Joyce] Kennard were voting more closely together.²

MOSK: That is accurate in some respects, but not entirely so.

LaBERGE: How has the presence of more women on the court changed the atmosphere, if at all?

1. 23 Cal. 3d 880 (1979).

2. Philip Hager, "The Odd Couple," California Lawyer, September 1993.

MOSK: Not at all. I think it's encouraging that there are three members of the court who are women [Justices Janice Rogers Brown, Kathryn Mickle Werdegar, and Joyce Kennard]. As a matter of fact, recently, one male member of the court was disqualified from hearing a particular case, and the chief justice appointed another woman, so we had a majority on the court for that one case. Incidentally, there was one state, Minnesota, that had a majority of women on its supreme court for some time. Unfortunately perhaps, one of the female members passed away or retired and was succeeded by a man, so that no longer is true.

LaBERGE: How about the subject of separation of church and state?

MOSK: I feel very strongly about that issue, that the state should not do anything to harm or discourage religious activity, but it also should not do anything to encourage it. I think our founding fathers made it very clear that ours was to be a society in which religion did not control activities. By the same token, of course, the state should not discourage or put hurdles in the way of free religious activity. But the two must be entirely separate and distinct, one not controlling or even encouraging the other.

LaBERGE: I remember you telling me the story how you in your high school graduation, you were either the valedictorian or you led in the procession to "Onward Christian Soldiers."

MOSK: Yes. Yes, I remember that very vividly. And nowadays, parents would have filed a lawsuit, but my parents thought it was humorous and took it as a joke.

LaBERGE: Since then, you ruled that public high school graduations could not have religious invocations.¹

MOSK: That's correct.

LaBERGE: And the same thing, what about textbook loans to private schools?

MOSK: Oh, I don't think public textbooks should be available to private institutions, whether religious or secular.

LaBERGE: Then there are others having to do with religion, cases where, if there's a Christian Scientist or a Jehovah's Witness that doesn't want their child [medically] treated, how do you approach that?

1. Sands v. Morongo Unified School District, 53 Cal. 3d 863 (1992).

MOSK: That is one of the most difficult issues that we can possibly face. That is, where a child may be suffering from a very serious malady, and the parents, who do not believe in medical science or treatment, prevent the child from getting any help that might make its life more pleasant. I think courts under those circumstances, very limited circumstances, could decide what was in the best interest of the child, not the parents but the child, assuming the child is not of an age where it may make a decision for itself. If a child is, say, a teenager or old enough to make decisions on its own, and the child believes in the religious values of its parents and therefore declines medical help, I don't think society can force medical assistance on the child. But on the other hand, if the child is not old enough to make that kind of a decision itself, then I think society can decide for it.¹

LaBERGE: And how does that then translate to the parental consent for abortion?

MOSK: I don't think it's inconsistent with it, in that with parental consent required for abortions, we're allowing the parents to decide what is in their best interest and the best interest of an unborn child that obviously cannot make decisions on its own.
[static on the tape here]

LaBERGE: I know you've ruled that way, and then I think two justices left the court and two new ones came in, so then it was overturned, is that right?

MOSK: Yes, that's accurate. The original decision was four-to-three in favor of the statutory parental consent law. But before the decision became final, Justices [Armand] Arabian and Chief Justice Lucas retired; two new justices were appointed, and both voted to grant a rehearing. On a rehearing, the vote was four-to-three the other way; that is, holding that the statute was unconstitutional.²

I found that difficult to decide. Were I a legislator, I might not have voted for that parental consent law. But the legislature in its legislative power voted for it, and I could not find anything unconstitutional in the passage of that bill.

1. See Walker v. Superior Court 1988.

2. American Academy of Pediatrics v. Lungren, 1997 Cal. LEXIS (Cal. Aug. 5, 1997).

LaBERGE: In a case like that where two justices leave, how does it even come up that there is going to be a rehearing? And then does that mean you have oral argument all over again?

MOSK: No, there is a statutory period before a decision of this court becomes final, and during that period, the losing party may seek a rehearing, and frequently does, I may add. But the court generally gives rather short shrift to petitions for rehearing because we feel we've given the matter adequate consideration before arriving at our determination. But this was a very unusual set of circumstances. As a matter of fact, I can't recall any previous case in which two justices in the majority retire before the opinion becomes final, and two new justices come in and vote for a rehearing.

LaBERGE: So was there then a new oral argument?

MOSK: No. They would just read the briefs and vote accordingly.

LaBERGE: On that issue of interpreting a statute or making legislation, what should the court be doing? Should the court be making the law, or should it be interpreting the law?

MOSK: We have to remember that we have three independent branches of government. The judicial branch is independent, but the legislative branch is also independent. It has a right to adopt whatever measures it deems to be in the public interest. The only thing that a judiciary can do is to ascertain whether that legislative act offends the constitution of either the state or the United States. We have no right to give our preference as to whether we like the legislation or don't like it. Our only purpose is to determine the constitutionality of a legislative enactment.

LaBERGE: Do you have any other examples just off the top of your head that were significant?

MOSK: I would say 99 times out of 100, the judiciary does not find a constitutional conflict with legislation. It's very rare that we do. We may interpret the legislative enactment to find out whether it applies to certain situations and not to others, but to declare an enactment invalid because of a constitutional conflict is very rare indeed.

LaBERGE: On the other hand, propositions, where you, it seems more often than not, do. The latest one was term limits, and I think you were one of, or maybe the only dissenter, to uphold that proposition.¹

MOSK: Yes. Initiative measures are a little more suspect than legislative enactments. You and I can sit down at a typewriter this afternoon and peck out an initiative measure, and give it a seductive title like "For Better Government and Lower Taxes," and we'll get a lot of signatures and probably have the measure passed. Yet there can be flaws in initiative measures. After all, when a bill is proposed in the legislature, it goes to a committee in one house, and then the floor of the house, to a committee in the other house, floor of that house, and finally to the governor for signature or veto. And in that long process, flaws and bugs and various problems in the measure are generally discovered.

But as I suggested, you and I might write up a measure this afternoon, and there could be all kinds of technical and other serious problems with it. As a matter of fact, I recall some years back we had to interpret an initiative measure, and in order to make sense out of it, we had to hold that "and" really meant "or." Now, that would have been discovered in legislative proceedings, but not in the initiative process.

LaBERGE: During Chief Justice Malcolm Lucas's time, several justices left, had just a short time here on the court. Do you have any reaction to that, about spending only a little bit of time? Some writer called it "the turnstile court" and suggested that that wasn't good for the stability of the court or . . .

MOSK: Yes, I am inclined toward that point of view. I consider being on the highest court in the state the highest distinction that one in the legal profession can attain. It does trouble me a bit to see how many lawyers become judges, whether at a trial level or on the supreme court, and leave after just a few years to go back into the legal profession and generally make a lot of money. I hate to see being on the supreme court reduced to an item in their biography. I think it's more significant than that.

1. California v. March Fong Eu, 54 Cal. 3d 492 (1991) upheld Proposition 140 (November 1990) in a 6-1 decision.

- LaBERGE: And also, several judges have gone on to do alternative dispute resolution. What is your feeling on that?
- MOSK: Yes, that's really what I meant by going back into the legal profession, and the reports are that they do very well financially. But I don't think making money should be the ideal of a judge.
- LaBERGE: Could you give an assessment of the court during Malcolm Lucas's time, I guess '86 to '96?
- MOSK: Malcolm Lucas was a fine chief justice. He has amazing dignity, and I think he created a good impression of the judiciary by his appearance at public events. On the other hand, I don't think he was a great administrator, as our current chief justice, Ron George, appears to be. But on the other hand, he was a credit to the court, and I found him a very fine and cooperative colleague. He also had a kind and gentle sense of humor that lightened critical events in the courtroom itself.
- LaBERGE: And what about Chief Justice Ron George? You said he's a good administrator.
- MOSK: Yes. He is very long on court administration, and I think has done a remarkable job in a short time of working on projects that affect the judiciary, from lower courts all the way up to ours.
- LaBERGE: I know he was influential in getting the law passed for more money for the courts.¹
- MOSK: Yes, he's been very effective in that. He's worked well with the legislature and with Governor Wilson. And as a show of his interest in how the judiciary is functioning, within a year and a half of his taking office, he visited the courts in all fifty-eight counties, which is quite a remarkable achievement.
- LaBERGE: When the chief justice is gone and something needs to be signed or done, who does it?
- MOSK: This is done through appointing one of the other six members of the court to be an acting chief justice. And generally, it proceeds by seniority. I will take the first three months, and then the next senior justice three months thereafter, so there's always someone available to be an acting chief justice if the chief is away, as he is right now, by the way. He's over in Europe on a holiday.

1. Lockyer-Eisenberg Trial Court Funding and Improvement Act of 1997.

LaBERGE: So are you acting chief?

MOSK: No, my turn has passed. Justice [Kathryn Mickle] Werdegar is the current acting chief.

LaBERGE: On the issue of administration, I know that you've had a plan to separate the court into civil and criminal . . .

MOSK: Yes. Back in 1983, I first made a proposal through an article in the Los Angeles Times that we ought to seriously consider having a bifurcated supreme court; that is, a supreme court civil and a supreme court criminal, each with five justices, a chief justice would be overall, and he'd have the power to assign cases to one court or the other, and to sit in one or the other in the event a judge is ill or otherwise unable to act. At that time, I pointed out that our criminal work was overwhelming in that we had 126 death penalty cases pending. That didn't stimulate a great deal of interest. Today we have nearly 500 death penalty cases pending. And so it occurred to me and to Senator [Quentin] Kopp that perhaps it was time to consider seriously the bifurcation of the supreme court. I'm not hopeful that it will succeed in the legislature at the present time. But . . .

[End Tape 6, Side A]

[Begin Tape 6, Side B]

LaBERGE: Senator Kopp is sponsoring right now, in this . . .

MOSK: Yes, he has a constitutional amendment proposed, currently under consideration by the legislature.

LaBERGE: And how do your colleagues feel about that?

MOSK: My colleagues are opposed to it.

LaBERGE: It's not your opinion, but why would they be opposed, when there's such a backlog?

MOSK: I think their feeling is that there should be just one supreme court that handles absolutely everything. My suggestion is not wholly new in that the states of Texas and Oklahoma have bifurcated supreme courts, and have had for years.

LaBERGE: If it doesn't pass, and you think that probably it won't pass, are there other ways to relieve the amount of work you have to do?

- MOSK: The only way, I suppose, is for the court just to deny hearings in more and more cases. I think that's unfortunate.
- LaBERGE: What do you foresee for the future, for the state of the judiciary in California? Is that one of the things you foresee, that more cases will be denied? Or more staff?
- MOSK: Statistically, I think a higher percentage of the cases will be denied, inevitably. As the number of petitions for hearing grows, necessarily more and more will have to be denied. I don't think creating a larger staff will be helpful. I think our staffs are adequate at present. Each of us has five lawyers, and I don't think we need any more at the present time.
- LaBERGE: One of your most recent decisions, and actually, I'm not sure if you wrote it or not, is a Kaiser Permanente one about arbitration and health maintenance organizations, just in 1997. [Engalla et al. v. Kaiser Permanente Medical Group et al.]¹
- MOSK: Yes, I did write that opinion. The facts reveal that Kaiser required arbitration of contentions made about the care it provided, but it did not encourage or even permit rapid arbitration. They took months and sometimes more than a year before their representative would cooperate in having an early arbitration hearing. In our opinion, we criticized that conduct very severely, and I understand that Kaiser has been making serious efforts to correct its arbitration policies.
- LaBERGE: In a situation like that, and there have been many, when you are writing the opinion, what is your responsibility for getting the others to come to your thinking, or do they try to get you to change a few words here and there?
- MOSK: Most everything we do is in writing. We very seldom have two-party discussions over opinions. But what I do is what my colleagues do, is to draft a proposed opinion, and that is circulated among my colleagues. They respond with either agreement or disagreement, or as more often, suggestions of how the opinion may be improved and, as improved, acquire their signature.
- It's a good scholarly approach, I think, to solving problems. And ultimately, at least the majority will have a consensus, and others may write dissenting opinions.
- LaBERGE: And will you see those, too, ahead of time?

1. 15 Cal. 4th 951 (1997).

MOSK: Oh, yes. Everything is circulated among all seven justices.

LaBERGE: In the same way, what is the chief justice's role in promoting collegiality?

MOSK: Actually, he is only one-seventh of the court, and he can't issue orders. But he does demonstrate by his own conduct how the rest of us ought to conduct ourselves with regard to our colleagues. Chief Justice George is quite good at that.

LaBERGE: What about socialization on the court? Do you have social events or do you socialize outside of work?

MOSK: Only at law-related events, bar association meetings and luncheons and dinners, and the law school events. But other than that, I'm not aware of any close social relationships among any two members of the court.

LaBERGE: Or even here in your offices, do you celebrate birthdays or things like that, or have lunches?

MOSK: Generally only with your own staff.

LaBERGE: So your staff is more of a social group in some sense?

MOSK: That's right, it is more of a unit.

LaBERGE: I know you've spoken highly of Peter Belton before, and Olga Murray. How do you work with your staff and how do you pick out such fine people to work with you?

MOSK: Just lucky, I guess. [Laughter] No, I am very fortunate. Peter Belton has been with me all thirty-three-plus years that I've been on the court. Olga Murray was with me for I think ten or eleven years. I have another member of my staff who is probably the most productive member of the whole court, Dennis Maio. He's a graduate of Yale and just a remarkable legal mind.

LaBERGE: What do you look for, if you needed another attorney, what do you look for?

MOSK: In the old days, law clerks came and stayed only one year, and then went out into the cold cruel world to make their mark. Now, the staff members stay permanently. So I don't have to interview applicants and consider their qualifications. In a way, it's kind of sad, because I've always enjoyed getting to know young lawyers and then to watch their progress in the profession years later. I have a number of my former law clerks who are law professors at various schools. I have one who's a judge of the municipal court in Santa Monica [Larry Rubin]. I kind of like the idea

of watching their progress. I don't have that opportunity now that they stay permanently.

But in a law clerk, I look for legal acumen, plus industry. I expect them to work hard, to put in long days of research and writing, and fortunately, all five of my law clerks do that.

LaBERGE: You're noted for the work that you put out, more than anybody else, I think.

MOSK: Yes, statistics do verify that. [Laughter]

[Interruption]

LaBERGE: How are we doing time-wise?

MOSK: We can take another ten minutes or so.

LaBERGE: We were talking about research and writing and the amount of work that you and your staff put out. How do you think what's happened in the world, how that impacts the law? I'm thinking, for instance, of the Vietnam War, or changing ideas towards abortion, or new discoveries in medicine.

MOSK: I suppose that every development in any related field does have an impact on the judicial process. But I think the impact at first is in the legislative field, both through the legislature and through the initiative process, and we get the issue only secondhand after it's been distilled by other branches of government. How it affects us is hard to determine. We I guess have yielded to mechanical developments, while here I have a typewriter, but I also have a gadget back here that's mechanical [demonstrating a computer] that I find difficulty in using. But I guess we cannot be unaware of scientific progress.

But on the other hand, courts are tradition-bound and guided entirely by a document that was designed in the 1700s.

LaBERGE: For instance, the computer has helped, I'm sure, your attorneys in their research. I'm not sure exactly how to use Lexis, but I know that it's easier than shepardizing.

MOSK: Yes, my staff does take advantage of all the scientific improvements. So to that extent, I guess it does shorten the work time, or hasten the conclusion of matters pending before us. And that has become important, because we're guided by a ninety-day rule. We must produce our opinions within ninety days of oral argument. As a matter of fact, I have to sign an affidavit every month that I do not

have any cases pending before me for more than ninety days before I can get my salary check.

LaBERGE: Even the Microsoft case that's now being investigated. You would have to know something about computers, I think, to even understand the issue.

MOSK: Yes. But on the other hand, we do get quite often cases involving scientific issues, and we have to, as I suggest, become experts on absolutely everything.

LaBERGE: Does new thinking in society affect you at all?

MOSK: No, I don't think so. It has an effect on the political process, of course. But I would hope it does not impact seriously on the judicial process.

LaBERGE: And do you consider the judicial process political? Because some people do.

MOSK: No, I don't. It's true, you're right in that some people try to make a political issue out of a judicial opinion. But they shouldn't, and it should not be a political issue.

LaBERGE: I have more questions that would maybe last another interview.

MOSK: Fine.

LaBERGE: OK. More on not specific cases, but your interests, your philosophy, would that be OK?

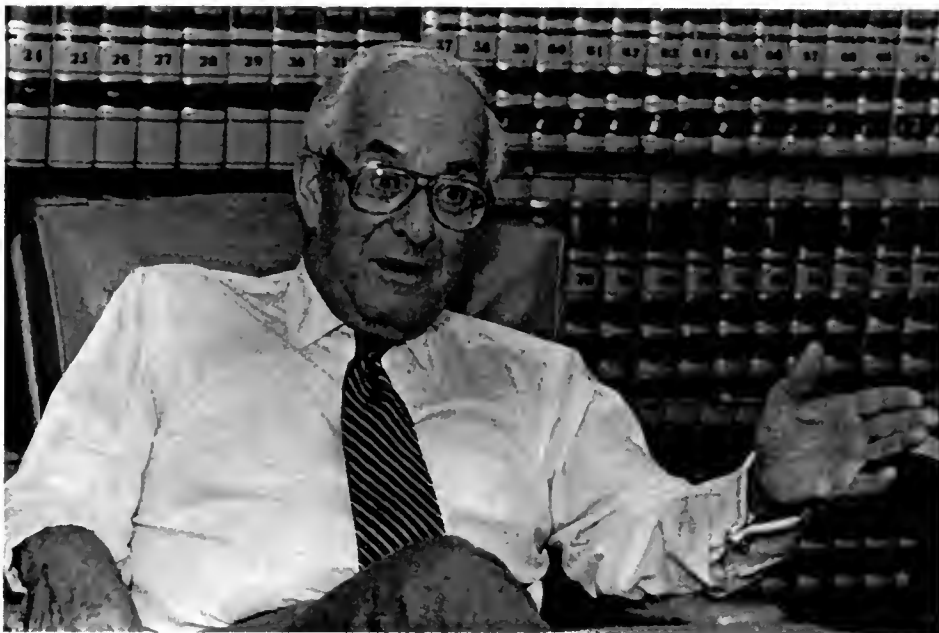
MOSK: Another interview.

[End Tape 6, Side B]

[End of Session]



Justice Schauer administering oath of office to Justice Stanley Mosk, Supreme Court Chambers, 9/1/64.



Justice Mosk in his Supreme Court chambers, 1986.

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RESUMÉ

PETER JEFFERY BELTON

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Personal:

Born: August 3, 1933, in Antofagasta, Chile, of British father and French mother.

Immigrated to U.S. in 1946; U.S. citizen since 1956.

Uses wheelchair since contracting polio in 1954.

Children: Jeffrey (b.1962), Marc (b.1964), Laurie (b.1967); two grandchildren.

Education:

Primary education: British and Canadian schools.

Higher education: Lycée Français de New York, Bachelier-ès-Lettres, 1952

Harvard College, A.B. 1956

Harvard Law School, LL.B. 1959

Professional career:

1960: admitted to California Bar.

1959-1960: taught legal research and writing at Boalt Hall Law School.

1960-1964: Staff attorney for Justice B. Rey Schauer, California Supreme Court.

1964 to present: Chief staff attorney for Justice Stanley Mosk, California Supreme Court.

Professional service:

Since January 1998 I have been the chair of the Appellate Rules Project Task Force of the Appellate Advisory Committee of the Judicial Council, engaged in a multi-year project to revise the Rules on Appeal of the California Rules of Court.

Community service:

1983-1986: Chair, San Francisco Postpolio Support Group.

1984: Member and legal advisor, Steering Committee, Bay Area & Western Postpolio Conference.

1982-1993: Member and three times President, Handicapped Access Appeals Board (now Access Appeals Commission), City and County of San Francisco.

REMARKS BY PETER J. BELTON, OUTSTANDING PUBLIC LAWYER OF
THE YEAR, AT MONTEREY, CALIFORNIA, OCTOBER 3, 1998

Thank you very much, Justice Werdegarr, for your kind words, and for reading the kind words of my boss and almost-lifelong friend, Justice Mosk. If his schedule allowed, he'd certainly be with us. I also want to thank Manuela Albuquerque for nominating me for this award, Margaret Sohagi and the Executive Committee for selecting me, and all my fellow public lawyers for honoring me. I truly appreciate it.

As Justice Werdegarr said, I have served as a Supreme Court staff attorney for more than 38 years, the last 34 as the senior staff attorney for Justice Mosk. When Manuela told me I'm the first judicial staff attorney to receive this award, my initial reaction was to talk to you about who Supreme Court staff attorneys are and what we do. But the subject was well covered in a recent article by Dick Goldberg entitled *The Shadow Court* in the July 1997 issue of the California Lawyer magazine. The article gives the basic facts: There are currently 69 attorneys on the Supreme Court staff. Most are career positions. Most of the attorneys were in private practice before coming to the Court. About half are women. Of the 69, 30 serve on the Central Staff, the specialized staff that prepares memoranda for the Justices on the petitions for review. The other 39 attorneys are divided among the staffs of the individual Justices. Each assists his or her Justice in various ways, primarily by studying the briefs in the cases assigned to that Justice, summarizing the facts, analyzing the issues, researching the law, discussing the case with the Justice, and drafting an opinion that expresses the Justice's views.

The Goldberg article, however, doesn't emphasize one aspect of the contribution of staff attorneys to the work of the Court that is harder to pin down

but I think is equally important: it is the fact that each staff attorney--like each Justice--brings to the job an individual perspective and understanding gained from his or her own life experience. In some instances, that experience can give the Justice a deeper appreciation of what is really at stake in the case--its underlying reality. Such cases happen to all of us, and they happened to me a few memorable times. I'd like to tell you about two of those instances. I'll call it A Tale of Two Cases.

To appreciate the first case, you need to know I was not born an American citizen. In fact, I didn't immigrate to this country until I was 12. But English was not a problem: I was a British citizen, and had all my elementary education in schools in England and Toronto. After I settled in the United States, I had my secondary education in New York, earned a bachelor's degree from Harvard College, and entered Harvard Law School. I had resident alien status, but I felt and acted as American as apple pie--I loved baseball, paid my taxes, and had even been classified 1A in the draft! By then I had lived in this country for almost a decade, and I intended to live here for the rest of my life, making a career in the law.

In middle of my second-year Constitutional Law class, however, I had a rude awakening. While discussing the rights and disabilities of aliens, my professor happened to mention that in most states--perhaps all--you had to be a citizen in order to practice law. I was surprised and dismayed. It seemed unfair, even irrational. I had worked long and hard to get through college and law school, and I believed I would make a good lawyer. I couldn't understand why I would be excluded from my chosen career just because I was a resident alien--why I had no right to practice law yet had to obey all the laws that a citizen obeyed, including paying taxes and being drafted. If nothing else, it seemed--to use a term I had just learned--invidious discrimination.

But at the time I believed I had no choice: I had to become a citizen or forget about becoming a lawyer. I therefore applied for my citizenship papers and went through the process quaintly called “naturalization.” (Had I been “unnatural” until then? Being an “alien”--even before E.T.--seemed sufficiently alienating.) Because I had been a legal resident of this country for over a decade, the process in my case took only a few months; many others would not be so lucky.

In due course, though, I had the chance to contribute to a solution to the problem. After graduation I settled in California, was admitted to the Bar, and joined the Supreme Court staff. One day about 10 years later a petition called *Raffaelli v. Committee of Bar Examiners* was assigned--randomly, like all other petitions--to Justice Mosk. For me it was a classic case of déjà vu. Paolo Raffaelli was an Italian citizen who immigrated to California intending to make his permanent home here. He entered San Jose State and graduated with a bachelor's degree. He entered Santa Clara Law School and graduated with a law degree. He passed the Bar exam on his first try. He was hired as a law clerk by a California law firm. He married an American woman, and had the legal status of a permanent resident alien.

But the Committee of Bar Examiners refused to admit him to the Bar on the sole ground that he was not a citizen: by statute, citizenship was a requirement for practicing law in California. (Former Bus. & Prof. Code, § 6060, subd. (a).) Rather than meekly complying as I did, however, Raffaelli chose to “fight it all the way to the Supreme Court”: he filed a petition in our Court challenging the constitutionality of the statute and asking us to order his admission.

There were, of course, striking similarities between my personal history and Raffaelli's. Justice Mosk knew my history, and it illustrated for him how irrational and discriminatory it was to exclude all noncitizens from the practice of law.

Knowing my interest in the subject, he asked me to work on the case. Needless to say, I was delighted.

My research showed that for the first quarter-century of statehood, anyone wanting to practice law in California had to be white, male, and a citizen. The exclusion of nonwhites and women was repealed in 1877, but the citizenship requirement persisted. Indeed, in the first part of this century the Legislature expanded the citizenship requirement by imposing it on a wide range of *other* occupations licensed by state or local government (e.g., teacher, pharmacist, psychologist, policeman, private eye, social worker, insurance broker, etc.)

After discussions with Justice Mosk, I drafted an opinion recommending that we strike down the statute and order Raffaelli's admission. (*Raffaelli v. Committee of Bar Examiners* (1972) 7 Cal.3d 288.) We reasoned there must be a rational connection between a law discriminating on the ground of alienage and the purpose the law is said to serve. We then reviewed five purposes that the State Bar claimed were served by the citizenship requirement for lawyers, but found that none was in fact promoted by it. For example, it was argued that a lawyer must be able to "appreciate the spirit of American institutions." (Id. at p. 296.) Rejecting that argument, we reasoned that the State could not show that *aliens as a class* were unable to understand American institutions. We said: "Knowledge of this kind comes not so much from the accident of birth as from the experience of the daily life of the community and the role of government in that life. These manifestations unfold to everyone who has lived in America or taken an active interest in the American scene. And there is no prescribed minimum number of years that a person must reside in the United States in order thus to 'appreciate' our institutions. Alexis de Tocqueville, after all, lived here for less than a year and never became an American citizen." (Ibid.)

Our decision unanimously held that the law excluding noncitizens from the practice of law was not rationally related to the purposes it was said to serve, and struck it down on the ground it violated the Equal Protection clauses of the United States and California Constitutions. We concluded: “In the light of the modern decisions safeguarding the rights of those among us who are not citizens of the United States, the exclusion appears constitutionally indefensible. It is the lingering vestige of a xenophobic attitude which also once restricted membership in our bar to persons who were both ‘male’ and ‘white.’ It should now be allowed to join those anachronistic classifications among the crumbled pedestals of history.” (Id. at p. 291) The Court ordered Raffaelli admitted to the Bar.

There are two postscripts to this story. First, shortly after our opinion was filed the Legislature began repealing many other laws requiring citizenship as a condition to engaging in an occupation. The process continued for several legislative sessions, and there are very few such laws left today.

Second, although personally satisfying to me, our decision applied only to California law. But 13 months later the United States Supreme Court faced the same question for the first time in a case out of Connecticut called *Application of Griffiths* (1973) 413 U.S. 717. The Supreme Court’s reasoning was very similar to ours and reached the same conclusion--i.e., to exclude all aliens from the practice of law simply because of their lack of citizenship violates the Equal Protection clause of the United States Constitution. The decision, of course, applied to all states, thus putting an end to such exclusions across the land. And it made my day (it still does) to see that the opinion of the court, written by Justice Lewis Powell, citing *Raffaelli*, said: “*In a thoughtful opinion*, the California Supreme Court unanimously declared unconstitutional a similar California rule.” (413 U.S. at p. 729, fn. 22, italics added.)

To appreciate the second case I want to share with you, I need to tell you that I contracted polio in 1954 and have been in a wheelchair ever since. Because I became disabled before my three children were born, they've never known me *not* to be in a wheelchair. Yet I feel that I fully participated, with their mother, in their upbringing. Like any parent, I read to them, played games with them, answered their questions about life and the world (usually in more detail than they wanted), drove them to school in my van equipped with a wheelchair lift and hand controls, helped them with their school work, and shared their adventures on weekends and family vacations. My being in a wheelchair was simply not an obstacle to normal family life, and certainly didn't prevent my children from participating in active sports--for example, they were competitive swimmers and won many ribbons and medals.

How is all this relevant? One day a petition called *In re Marriage of Carney* arrived at the Court and was assigned--again randomly--to Justice Mosk. For me it was déjà vu all over again! William and Ellen Carney had two sons, but separated while the boys were infants. Ellen gave custody to William; she lived in New York, he in California. He brought up his sons with the help of his significant other; Ellen didn't even visit them for five years. When the boys were aged six and eight, William had car accident that left him a quadriplegic in a wheelchair. But he remained close to his sons, and bought van with a wheelchair lift and hand controls.

William and Ellen began divorce proceedings. Ellen asked for custody of the boys on the sole ground of William's physical handicap. At the custody hearing the trial judge--a man in his 70's, retired and serving pro tem.--questioned the witnesses only about the presumed effect of the handicap on William's ability to play sports with his sons. For example, he an asked expert witness: "would it be better if they had a parent that was able to actively go places with them, take them

places, play Little League baseball, go fishing?” (24 Cal.3d 725, 734.) Although the judge agreed that William had a “great relationship” with his sons, he concluded: “I think it would be detrimental to the boys to grow up until age 18 in the custody of their father. It wouldn’t be a normal relationship between father and boys. It’s unfortunate William has to have help bathing and dressing and undressing. He can’t do anything for the boys himself except maybe talk to them and teach them, be a tutor, which is good, but it’s not enough.” (Id. at p. 735.) The judge awarded custody to Ellen, and William appealed.

The Court of Appeal affirmed in brief unpublished opinion, largely on the ground that a trial judge has broad discretion in awarding custody. William petitioned the California Supreme Court for a hearing, claiming the judge abused his discretion. The Court rarely grants review in such circumstances, but again I was able to contribute to a different result.

Once more, of course, there were striking similarities between my personal history and the facts of the case. My experience with raising my children despite a physical disability illustrated for Justice Mosk how outdated the trial judge’s views on the subject were. Again he asked me to work on the case, and again I was delighted.

First I drafted a memorandum recommending that we grant a hearing, and all seven Justices voted to do so. Then I began work on the opinion. There was no big question of law in the case as there was in *Raffaelli*, but the record was rife with stereotypical thinking at its worst--stereotypes about the role of parents in their children’s upbringing and the capability of disabled persons to fill that role.

After discussions with Justice Mosk, I drafted an opinion exposing and condemning each of those stereotypes. (*In re Marriage of Carney* (1979) 24 Cal.3d 725.) As our guiding principle, we declared: “if a person has a physical handicap it is impermissible for the court simply to rely on that condition as prima

facie evidence of the person's unfitness as a parent or of probable detriment to the child; rather, in all cases the court must view the handicapped person as an individual and the family as a whole. To achieve this, the court should inquire into the person's actual and potential physical capabilities, learn how he or she has adapted to the disability and manages its problems, consider how the other members of the household have adjusted thereto, and take into account the special contributions the person may make to the family despite—or even because of—the handicap.” (Id. at p. 736.)

Applying that principle to the facts of the case, we reasoned: “For some, the court's emphasis on the importance of a father's ‘playing baseball’ or ‘going fishing’ with his sons may evoke nostalgic memories of a Norman Rockwell cover on the old Saturday Evening Post. But it has at last been understood that a boy need not prove his masculinity on the playing fields of Eton, nor must a man compete with his son in athletics in order to be a good father: their relationship is no less ‘normal’ if it is built on shared experiences in such fields of interest as science, music, arts and crafts, history or travel, or in pursuing such classic hobbies as stamp or coin collecting. In short, an afternoon that a father and son spend together at a museum or the zoo is surely no less enriching than an equivalent amount of time spent catching either balls or fish.” (Id. at p. 737.)

Turning to the realities of children's lives today, we said: “the stereotype indulged in by the court is false for an additional reason: it mistakenly assumes that the parent's handicap inevitably handicaps the child. But children are more adaptable than the court gives them credit for; if one path to their enjoyment of physical activities is closed, they will soon find another. Indeed, having a handicapped parent often stimulates the growth of a child's imagination, independence, and self-reliance. . . . It is true that William may not be able to play

tennis or swim, ride a bicycle or do gymnastics; but it does not follow that his children cannot learn and enjoy such skills” (Id. at pp. 737-738.)

Finally, and most important, we explained: “On a deeper level . . . the stereotype is false because it fails to reach the heart of the parent-child relationship. Contemporary psychology confirms what wise families have perhaps always known—that the essence of parenting is not to be found in the harried rounds of daily carpooling endemic to modern suburban life, or even in the doggedly dutiful acts of ‘togetherness’ committed every weekend by well-meaning fathers and mothers across America. Rather, its essence lies in the ethical, emotional, and intellectual guidance the parent gives to the child throughout his formative years, and often beyond. The source of this guidance is the adult’s own experience of life; its motive power is parental love and concern for the child’s well-being; and its teachings deal with such fundamental matters as the child’s feelings about himself, his relationships with others, his system of values, his standards of conduct, and his goals and priorities in life. Even if it were true, as the court herein asserted, that William cannot do ‘anything’ for his sons except ‘talk to them and teach them, be a tutor,’ that would not only be ‘enough’—contrary to the court’s conclusion—it would be the most valuable service a parent can render. Yet his capacity to do so is entirely unrelated to his physical prowess: however limited his bodily strength may be, a handicapped parent is a whole person to the child who needs his affection, sympathy, and wisdom to deal with the problems of growing up. Indeed, in such matters his handicap may well be an asset: few can pass through the crucible of a severe physical disability without learning enduring lessons in patience and tolerance.” (Id. at p. 739.)

For all those reasons, the Court unanimously held that the order taking custody of the boys away from their father was an abuse of discretion, and ordered a new trial.

Again there are two postscripts. First, at the new trial, before a different judge, the boys were returned to their father.

Second, the case caught the attention of the media, and eventually resulted in a piece on ABC's "20/20" television newsmagazine and a two-hour, prime-time docudrama movie version on CBS. But that's a story for another day

To conclude, I accept this award not so much for myself as for all judicial staff attorneys, and not only those who work for Supreme Court but also those who work for the Courts of Appeal and the trial courts. We're few in number and do our work far from the public eye, but we're all part of a great and honorable tradition of serving the people of our state as public lawyers. We join you today in celebrating that tradition. Thank you very much.

REMARKS BY PETER BELTON AT CEREMONY
HONORING JUSTICE MOSK'S
RECORD-SETTING SERVICE ON THE COURT,
JANUARY 7, 2000

May it please the court. Thank you, Chief Justice George, for your generous introduction, and for inviting me to address the court again. In doing so, I speak not just for myself, but for Justice Mosk's whole staff—and for his many former staff attorneys and externs, some of whom were able to join us today.

Richard has given us a lively overview of his father's career; my task is to focus on his record-setting tenure as a justice of this court. What a grand topic! There is so much I could tell you—I have many fond memories of my 35 years of working for Justice Mosk. But fear not: the Chief Justice has wisely limited our time today, so I'll touch only on the high points. As Henry VIII might have said to each of his wives, I shall not keep you long.

I draw my inspiration from America's National Pastime: baseball. Why baseball? For three reasons. First, by breaking the longevity record Justice Mosk has earned a new title: as many have noted, he is now officially the Cal Ripken of the California Supreme Court. We have our own record-setter! And Justice Mosk reminds me of Cal Ripken in yet another way: like Ripken, Justice Mosk is a modest, unassuming, hard-working gentleman, dedicated to doing his job—and probably wondering what all this fuss is about.

Secondly, Justice Mosk has always been a baseball fan. As proof, I cite the fact that at 5:04 p.m. on October 17, 1989, when the Loma Prieta earthquake struck, Justice Mosk was sitting in the stands at Candlestick Park waiting for the third game of the 1989 World Series to begin, and he was disappointed when the game was called for such a minor inconvenience as 7.1 on the Richter scale. I will

also divulge—what many of you may not know—that some years earlier Justice Mosk thought seriously about applying for the job of Commissioner of Baseball; unfortunately for baseball but fortunately for us, he resisted the temptation. There was precedent, of course, in the commanding figure of Judge Kenesaw Mountain Landis. After 17 years as a federal district judge, Landis served for 23 years as Commissioner of Baseball, ruling the game with an iron hand. Justice Mosk would have been much kinder and gentler, but he too would have made a great commissioner.

Thirdly—and this brings me to what I hope is a smooth segue into my real topic—baseball is a game of statistics: there is a statistic for everything that happens in the game. In fact, baseball can be seen as just one huge statistical database.

Justice Mosk's statistics are certainly impressive. The previous record holder, Justice John Shenk, served on the court from April 10, 1924, to August 3, 1959, for a total of 12,898 days. Justice Mosk joined the court on September 1, 1964, and by the day after Christmas 1999 he had served 12,899 days, breaking the Shenk record. For these precise figures I am indebted to the research of our staff attorney Ted Stroll.

Since the day after Christmas, of course, Justice Mosk has set a new record every day; as of today, for example, he has served 12,911 days. And he continues to do so: in three months he'll break 13,000. Justice Shenk's record stood for four decades, but I believe that Justice Mosk's record—whatever it turns out to be—will stand for much longer. Careers of 30 to 40 years on the court are becoming rare: for example, the last four justices to retire from the court served an average of only 43 months each. For that reason I daresay Justice Mosk's record will never be broken—although I'm sure he invites his present and future colleagues to give it their best shot.

How do we measure 12,899 days of service? By the calendar, that is 35 years, 4 months, and a few days. During that period we have had a total of seven United States Presidents and six California Governors. Justice Mosk joined the court less than a year after President Kennedy was assassinated, on a day when President Clinton was still a teenager growing up in Arkansas. Technologically speaking, it was the Dark Ages: in those days the court had no personal computers, no photocopiers, no fax machines, no cell phones, no pagers, no voice mail, and no Internet service. I note, however, that Justice Mosk managed to do his work—and do it well—without the help of those modern wonders.

Another way of measuring the length of Justice Mosk's service is to realize that he has now shared the bench with no less than 30 other justices of this court, including six Chief Justices. But we have had only 110 justices in our history. This means that Justice Mosk has served with more than one-quarter of the justices who have ever sat on this court. And the figure is all the more impressive when we remember that in the court's early period many justices served only a few years each. In fact, Justice Mosk alone has served longer than the terms of the first dozen justices put together.

But Justice Mosk has not just kept the seat warm, he has been extraordinarily productive in his 35-plus years. I am indebted to the research of Ed Jessen, our Reporter of Decisions, for the following figures: as of this morning, Justice Mosk has authored no less than 710 majority opinions and 776 minority opinions, for a grand total of 1,486 opinions of this court. A precise division of his minority opinions into concurrences and dissents is difficult, because some are both; but a fair reading indicates they are composed of 285 concurring opinions and 491 dissents. The library shelves groan under the weight of his work product: opinions by Justice Mosk appear in each of the last 85 volumes of the Official California Reports.

Justice Mosk's grand total of 1,486 opinions very likely gives him a second record as well: the most productive justice in the history of the court. His output easily exceeds the opinion total of each of the second and third longest-serving members of the court, Justice Shenk and Chief Justice Traynor. Not only that, but at an age when he would have been forgiven for slowing down a little, his productivity continues unabated: for example, in the most recent five-year reporting period—from 1994 to 1999—Justice Mosk authored over a hundred more majority opinions and over 200 more minority opinions. Finally, and perhaps the most startling figure of all, Justice Mosk's current total of 1,486 opinions works out to an average of one opinion filed every eight days of the last three and a half decades.

I will spare you any more statistics—even baseball fans can have too much of a good thing. But Justice Mosk's record on the court is not only rich in quantity, it is rich in quality. Many of his majority opinions—and not a few of his dissents—have made lasting contributions to the law of California and to the quality of life of its citizens. Some have had a potent effect on the development of the law in other states and in the federal courts. Although he has written on every topic to come before the court during his tenure—including taxation, insurance law, contracts, and property law—Justice Mosk is perhaps best known for his landmark opinions in the fields of civil rights and liberties, free speech and free press, equal protection, privacy, state constitutionalism, environmental law, employee rights, and consumer protection. With over 1400 opinions to choose from I can cite only a few, but I believe they represent a fair cross-section of the issues he loves to grapple with, and the just and workable solutions he tries to reach. I will call the roll in alphabetical order:

Associated Home Builders v. City of Walnut Creek (1971) 4 Cal.3d 633, holding constitutional a requirement that developers of private land dedicate open space to public use.

Bakke v. Regents of University of California (1976) 18 Cal.3d 34, holding unconstitutional an admission program to a public university based on racial quotas.

Burrows v. Superior Court (1974) 13 Cal.3d 238, holding that bank depositors have a constitutionally protected expectation of privacy in their bank statements.

City of Berkeley v. Superior Court (1980) 26 Cal.3d 515, settling the rule that private owners of tidelands hold them subject to a trust for public access and use.

Cobbs v. Grant (1972) 8 Cal.3d 229, adopting the doctrine of informed consent, which requires doctors to disclose to their patients the treatments available and the risks inherent in each.

Friends of Mammoth v. Board of Supervisors (1972) 8 Cal.3d 247, holding that developers of private building projects needing a governmental license or public funds must comply with the California Environmental Quality Act.

Henning v. Industrial Welfare Commission (1988) 46 Cal.3d 1262, striking down a two-tier minimum wage system that authorized a lower minimum wage for employees who work for tips.

In re Lynch (1972) 8 Cal.3d 410, holding that the penalty for a crime can be so disproportionate to the offense that it violates the cruel or unusual punishments clause.

In re Marriage of Carney (1979) 24 Cal.3d 725, holding that disabled persons cannot be deprived of the custody of their children on the basis of stereotypes about their fitness as parents.

Miller v. Superior Court (1999) 21 Cal.4th 883, holding that journalists cannot be jailed for contempt of court for refusing to give prosecutors unpublished material.

Molko v. Holy Spirit Association (1988) 46 Cal.3d 1092, holding that former Moonies have the right to bring an action against the Unification Church for fraud and intentional infliction of emotional distress.

Parr v. Municipal Court (1971) 3 Cal.3d 861, holding that a “Keep Off the Grass” ordinance designed to discriminate against hippies violates the equal protection clause.

People v. Shirley (1982) 31 Cal.3d 18, holding that police hypnosis of prospective witnesses for the purpose of enhancing their memory contaminates the witnesses and makes their testimony inadmissible.

People v. Wheeler (1978) 22 Cal.3d 258, holding it unconstitutional for the prosecution to use racially based peremptory challenges against the prospective jurors in a criminal trial.

Rodriguez v. Bethlehem Steel Corp. (1974) 12 Cal.3d 382, holding that the spouse of an injured worker has the right to bring an action for loss of consortium.

Schweiger v. Superior Court (1970) 3 Cal.3d 507, holding that tenants may defend against unlawful detainer actions on the ground they were evicted in retaliation for exercising their statutory right to ask for repairs.

Scott v. Pacific Gas & Electric Co. (1995) 11 Cal.4th 454, recognizing for the first time an employee’s cause of action for wrongful demotion.

Sindell v. Abbott Laboratories (1980) 26 Cal.3d 588, holding that a person unable to identify the particular manufacturer of the drug that injured him or her may jointly sue all the manufacturers of that drug on the theory of enterprise liability.

Vasquez v. Superior Court (1971) 4 Cal.3d 800, extending the important remedy of class actions to the field of consumer fraud.

And finally, *Wirta v. Alameda-Contra Costa Transit District* (1967) 68 Cal.2d 51, holding it a violation of free speech for a public bus company to refuse to sell advertising space in its coaches for an anti-Vietnam War message while selling it for commercial advertising.

Thank you for your patience. These cases amount to less than two percent of Justice Mosk's entire output to date, but they illustrate his lifelong commitment to the rule of law and a free and fair society. We should not be surprised that he has always given pride of place in his chambers to a bust of Thomas Jefferson. As the Los Angeles Times said in a recent editorial praising Justice Mosk, "Californians are fortunate that this strong defender of civil rights, civil liberties and press freedom has proved to have such staying power."

In September 1964 there were four giants on the California Supreme Court. By 1982, three had gone—Chief Justice Traynor, Justice Tobriner, and Justice Peters. The fourth—Justice Mosk—is with us still. And for that, we are all grateful.

Remarks Regarding Justice Stanley Mosk
By
Richard M. Mosk on January 7, 2000

Chief Justice George and Associate Justices. May It Please The Court.

I have had the privilege of arguing cases before this Court, but never without at least one pro tem Justice for obvious reasons. So I am pleased to address the full Court.

Stanley Mosk was born in San Antonio, Texas around the time of the Titanic disaster. The family moved to Rockford, Illinois. There he was class president of his high school and interested in journalism.

Stanley Mosk graduated the University of Chicago where he played first base on a baseball team and attended Chicago Law School. The family ran out of money during the depression years, and therefore they headed West.

In Los Angeles, Stanley Mosk completed law school and began the practice of law as a sole practitioner. He described his practice as consisting of a \$25 case and two smaller ones.

He was interested in politics, following the famous campaign of Upton Sinclair for Governor of California and participating in some local campaigns. During that period, he met and married my now deceased mother, Edna. She played a major role in his career.

*Member of California Bar; Judge on Iran - U.S. Claims Tribunal

Having been deeply involved in the Culbert Olson campaign for Governor in 1938, he was invited into the administration, first as clemency secretary and then as Executive Secretary to the Governor. His patron was his law professor, Phil S. Gibson, who was a director of finance in the Olson administration and later Chief Justice of California.

Governor Olson also appointed him to the University of California Board of Regents. Governor Olson lost his re-election bid to a person considered by those in the Olson administration to be a reactionary - Attorney General Earl Warren. Later, the Warren and Mosk families became quite close. Stanley Mosk used to apologize to the Chief Justice for all the votes he cast against him. When Chief Justice Earl Warren announced his resignation, he recommended three people to President Johnson as his successor. One of them was Stanley Mosk. President Johnson nominated Justice Fortas, who was not confirmed.

In the last days of the Olson administration, Governor Olson told Stanley Mosk that he, Governor Olson, was appointing Stanley Mosk to the Los Angeles Municipal Court and immediately to take the necessary papers to the Secretary of State's office. Stanley Mosk, although delighted, failed to heed that instruction. That night the Governor called and asked if Stanley Mosk had filed the papers. Stanley Mosk was embarrassed to say he had not. At that point the Governor said he had decided to appoint Stanley Mosk to the Los Angeles Superior Court and someone else to the Municipal Court. So procrastination is how Stanley Mosk became the youngest Superior Court judge. In his first case as a trial judge, one

of his jury instructions led to a reversal. The prevailing lawyer was the great litigator, Joe Ball. (Eckman v. Arnold Taxi Co., 64 Cal.App.2d 229 (1944).)

At the next election, he drew opposition - Judge Ida May Adams, known as the "marrying judge" for all of the marriage ceremonies she performed, and Judge Leroy Dawson, a veteran disabled in World War I. Dawson attacked Stanley Mosk by saying that "we should not have a judge in his childhood." Stanley Mosk replied, "better a judge in his childhood than one in his second childhood." Stanley Mosk looks at it differently now. He was re-elected by the largest margin in history for a contested Superior Court election up to that time.

Although exempt from the draft and rendering service in the Coast Guard, Stanley Mosk implored the Director of Selective Service to overlook his judicial position and deficient eyes because of a desire to serve his country in World War II. He memorized the eye chart and with the benign neglect of the Director of Selective Service passed the physical examination and enlisted as a private in the army. He served in the Transportation Corp – an odd assignment for a nearsighted soldier. He rose to private first class. Later, when Attorney General, he was once introduced at an event as follows: "General Mosk, I would like you to meet Omar Bradley." That give him a thrill. Fortunately, Governor Earl Warren did not fill Judge Mosk's Superior Court seat, so that he was able to return to it after the war.

As a trial judge he had some memorable cases. As a young Superior Court judge, Stanley Mosk ruled at a time before Shelley v. Kramer, 334 U.S. 1 (1948),

that a covenant restricting the ownership of real property to Caucasians was constitutionally not enforceable. Judge Mosk said in his ruling:

"There is no allegation, and no suggestion, that any of these defendants would not be law-abiding neighbors and citizens of the community. The only objection to them is their color and race.

We read in columns in the press each day about un-American activities. This court feels there is no more reprehensible un-American activity than to attempt to deprive persons of their own houses on a 'master race' theory.

Our nation just fought against the Nazi race superiority doctrines. One of these defendants was in that war and is a Purple Heart veteran. This court would indeed be callous to his constitutional rights if it were now to permit him to be ousted from his own home by using 'race' as the measure of his worth as a citizen and a neighbor." (Los Angeles Sentinel, Oct. 30, 1947, p.1.).

Despite his personal opposition to the death penalty, Judge Mosk imposed a death penalty in a case. His decision to admit a confession in that case was upheld narrowly by the U.S. Supreme Court. (Crooker v. California, 357 U.S. 433 (1958).) Under Miranda v. Arizona, 384 U.S. 436, 479 n.48 (1966); Escobido v.

Illinois, 378 U.S. 478, 491-92 (1964) and Massiah v. United States, 377 U.S. 201, 206-07 (1964), his decision is no longer the law, although recently the United States Supreme Court granted certiorari to again deal with that issue. Later when Governor Pat Brown was considering whether to commute the defendant's death sentence, he was influenced by a note from Attorney General Mosk, who wrote that he would not object to such a commutation from death to life imprisonment because the condemned man was capable of being rehabilitated "in the distant future" and could "become a constructive member of society." The Governor did commute the death penalty, See E. Brown, Public Justice, Private Mercy 13 (1989).

Even though Stanley Mosk considers the death penalty "socially" invalid and "anachronistic", as a judge and prosecutor, he has carried out his legal duties in connection with its enforcement. (In re Anderson, 69 Cal.2d 613, 634 (1968) (concurring opinion.); see People v Spencer, 60 Cal 2d 64 (1963) in which as Attorney General Stanley Mosk's position to affirm a death penalty case was sustained. The trial judge was Hon Leroy Dawson).

In my law school torts class we studied a California case in which the trial judge's decision was reversed by a 2 to 1 decision of the Court of Appeal. (Seavey, Keeton, Keeton, Law of Torts 378 (1957)). Upon learning that the trial judge was Stanley Mosk, I confronted him with this seemingly embarrassing fact. He said the reversal of his decision -- a rare occurrence he added -- took place because plaintiff's lawyer wanted an instruction on the then untested doctrine of

strict liability. (Beck v. Bel Air Properties, Inc., 134 Cal.App.2d 834 (1955).) On the brief for the successful appellant was Otto K. Kaus, later a colleague of Stanley Mosk on the Supreme Court. Stanley Mosk sat on the Court of Appeals pro tem from time to time. (See, e.g., Travelers Ins., etc. Ins. Co. v. Pac. Emp. Ins. Co., 130 Cal.App.2d 158 (1955).)

Judge Mosk is still remembered for his charitable activities in the Los Angeles community.

In 1958, Stanley Mosk was elected California Attorney General by the largest margin of any contested election in the country on that election day (over a million votes). He was re-elected four years later by a large margin. As Attorney General, he established a constitutional rights section within the Department of Justice; he began enforcing the state's then moribund anti-trust law (Bus. & Prof. Code § 16700, et seq.); he instigated a consumer rights division (see People ex rel Mosk v. National Research Co. of Cal., 201 Cal.App.2d 765 (1962)); he vigorously defended civil rights; he recruited women and minorities for positions in the Department of Justice long before it was fashionable to do so; he protected Latino voting rights in the Imperial Valley; and he fought for California's water rights, including before the United States Supreme Court. (See, e.g., Arizona v. California, 373 U.S. 546; 376 U.S. 340 (1963).) He argued "Are we going to give Colorado River water to the people of California to drink or to Arizona for asparagus." The Court preferred asparagus.

Stanley Mosk won respect and support from law enforcement by his record as a prosecutor and for his work on behalf of legislation supportive of law enforcement. A United States Senator said of Attorney General Mosk that "he has been one of the most effective leaders in the effort to give law enforcement the status and accord which it so richly deserves." (110 Cong. Rec. At 22,079 (1964) (Remarks of Sen. Thomas Dodd).) Another United States Senator, Sam Ervin, referred to Stanley Mosk as "one of the finest constitutional lawyers in the United States." (110 Cong. Rec. 18, 115 (1964).)

Stanley Mosk is very proud of his forcing the Professional Golfer's Association to eliminate its "Caucasian only" clause so that Black golfers, such as Charles Sifford and William Spiller, could compete. Recently, these events have been recounted as the great golfer Tiger Woods has excelled. (See Arkush, "Setting a Course for Equality" Golf World, Nov. 19, 1999, p. 32.)

Stanley Mosk is also proud of the accomplishments of his deputies, including the present Chief Justice of California and many other judges, officials and leaders in the Bar throughout California.

In describing the membership of the John Birch Society in a report to the Governor published in the New York Times (August 3, 1961 at 3, col. 2) Stanley Mosk originated the expression "little old ladies in tennis shoes", an appellation that has become a part of the American lexicon. (For a description of Stanley Mosk's early career, see R. Mosk, "Early Versions of Justice," 12 Hast. Const. L. Q. 383 1985); Bell, "Stanley Mosk: The Politician Who Dares," Pageant 86

(October 1964).

Stanley Mosk was the sole Democratic National Committeeman from California and was an early and active supporter of Presidential candidate, Senator John F. Kennedy. He worked closely and well with President Kennedy and Attorney General Robert Kennedy and was offered positions in the Kennedy administration. He was President Kennedy's choice to be a United States Senator from California in connection with the 1964 election. After President Kennedy was assassinated, Stanley Mosk rejected the opportunity to become a United States Senator (he was far ahead public opinion polls) and was appointed by Governor Brown to the California Supreme Court.

Stanley Mosk's appointment took place when I was a clerk for the great Justice Mathew Tobriner. So I had the opportunity to work on the court when Stanley Mosk was a justice.

Others can discuss his judicial career. I must point out, however, recently it was written, "Traynor; Tobriner; Cardozo; Fuld; Holmes; Shaw; Cooley; and Vanderbilt. The pantheon of state court judges certainly includes them. And just as certainly, no one currently sitting on one of America's state benches is more deserving and more likely to be named alongside them than Stanley Mosk. An institution, an icon, a trailblazer, a legal scholar, a constitutional guardian, a veritable living legend of the American judiciary, Justice Mosk has courageously and wisely labored for more than three decades as one of the most influential members in the history of one of the most influential tribunals in the western

world.” (62 Alb. L. Rev. 1213 (1999).) In an editorial, concerning this record of longevity on this Court, the Los Angeles Times editorialized about Stanley Mosk, “Californians are fortunate that this strong defender of civil rights, civil liberties and press freedom has proved to have such staying power.” “Justice Mosk: 35 and Counting,” Los Angeles Times, Dec. 28, 1999, p.B-8.

Stanley Mosk has been subject to election or on the ballot about nine times. He has always been aware of his obligations to the people of California who have placed confidence in him. I believe the people’s expectations have been met.

The family of Justice Mosk - his wife Kaygey; I, his son; Sandra Mosk, his daughter-in-law; Matthew Mosk and Julie Mosk Morris, his grandchildren; Julie’s husband Daniel Morris; and Noah Morris and Jenna Morris, his two great grandchildren -- are all proud of him and the milestone he has reached. We appreciate what this Court has meant to Stanley Mosk and the kind considerations it has extended to us in connection with this ceremony.

LAW CLERKS

Murray, Olga	1964-1992	George Washington
Belton, Peter	1964-	Harvard
Maio, Dennis Peter	1985-	Yale
Stroll, Ted	1990-	UC-Berkeley
Collins, Alice	1991-1994	UC-Berkeley
Katz, Rob	1993-	Stanford
Schelly, Judith	1994-	UC-Berkeley
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Hansen, John	1964-1965	Harvard
Black, William	1965-1966	Harvard
Friedland, David	1966-1967	UCLA
Galbraith, Alan	1967-1968	U Michigan
Reutlinger, Mark	1968-1969	UC-Berkeley
Klevens, Joel	1969-1971	Stanford
Rubin, Larry	1971-1972	UCLA
Ervin, Howard	1972-1973	U Chicago
Levin, John	1973-1974	Stanford
Lysaght, Brian	1974-1975	UC-Davis
Rothschild, Richard	1975-1976	USC
Kaus, Robert (Mickey)	1976-1977	Harvard
Pearlstein, Marvin	1977-1978	UC-Berkeley
Asperger, Jim	1978-1979	UCLA
Shiba, Wendy	1979-1980	Temple
Beattie, Greg	1980-1981	Harvard
Labadie, Craig	1981-1982	UC-Davis
Ackerman, Valerie	1982-1983	Stanford
Asaro, Andrea	1982-1983	Stanford
Dear, Jake	1983-1984	UC-Davis
Rooney, Jim	1983-1984	UC-Berkeley
Maio, Dennis Peter	1984-1985	Yale
Lindsay, Ellyn	1984-1985	UC-Berkeley
Schelly, Judith	1985-1986	UC-Berkeley
Weinberg, Bob	1985-1986	Yale
Tiersma, Peter	1986-1987	UC-Berkeley
Ramshaw, Paul	1986-1987	UC-Davis
Budd, Jordan	1987-1988	Harvard
Roden, Bob	1987-1988	UCLA
Pori, Brian	1988-1989	Yale
Porter, Dave	1988-1989	UC-Davis
Katz, Rob	1989-1990	Stanford
Lynch, Chris	1989-1990	Stanford
Forman, Ellen	1990-1991	Hastings
Murthy, Sakthi	1991-1992	UC-Berkeley
Stearns, Laurie	1992-1993	UC-Berkeley
Sano, Kazu	1993-1994	U Chicago
Quinn, John	1994-1995	Hastings

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